EXPATRIATION NATURALIZTION

OPINIONS

OF

THE PRINCIPAL OFFICERS

OF

THE EXECUTIVE DEPARTMENTS,

AND

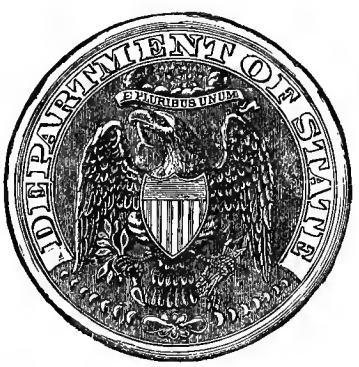
OTHER PAPERS

RELATING TO

EXPATRIATION, NATURALIZATION.

AND

CHANGE OF ALLEGIANCE.



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PAPERS

RELATING TO

EXPATRIATION, NATURALIZATION, AND CHANGE OF ALLEGIANCE.

No. 496.

The President to the Secretary of State.[1]

EXECUTIVE MANSION,
Washington, D. C., August 6, 1873.

SIR: Circumstances have made it desirable that I should have the opinions of the principal officers in each of the Executive Departments respecting several questions which are stated below.

It is proper to say that these questions concern solely the relations between the Government and persons who may claim its protection as citizens of the United States. They do not extend to an inquiry whether rights of succession or of property may or may not be affected by any of the conditions referred to.

Your opinion on these subjects, in writing, at your early convenience, is desired, with a view to forming a general plan of conduct for the Executive in respect to such questions.

You will inclose your reply, addressed to me, under cover to the Secretary of State, indicating on the envelope that it is in reply to my letter of this date.

I am, sir, your obedient servant,

U. S. GRANT.

Hon. HAMILTON FISH,
Secretary of State.

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[1] A similar letter was addressed to each head of an Executive Department.

QUESTIONS.

EXECUTIVE MANSION,
Washington, August 6, 1873.

I. The law-making power having declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

II. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return?

IV. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

V. What should constitute evidence of the absence of an intent to return in such cases?

VI. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?

VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States entitled to its protection?

VII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

U. S. GRANT.

No. 497.

The Secretary of State to the President.

DEPARTMENT OF STATE,
Washington, August 25, 1873.

To the President:

I have had the honor to receive your communication, dated the 6th instant, requiring my opinion as the principal officer of one of the Executive Departments respecting several questions which accompanied your communication.

In obedience to that requirement I respectfully submit my opinion, in answer to the several questions, as follows:

"*Question* 1. The law-making power having declared that 'the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness,' (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?"

The act of Congress of 27th July, 1868, (15 Stat. at Large, 223,) disposed of the contradictory opinions and decisions of officers of this Government as to the right of expatriation (so far as it concerns citizens of the United States) by declaring in its preamble that "the right of extradition is a natural and inherent right of all people."

This is the legislative declaration of the principle on which the naturalization laws of the United States have ever rested; and is the legislative sanction of the doctrine which has, almost without exception, been uniformly held in the diplomatic correspondence, and by the executive and political branch of the Government.

There seems, therefore, to be no difficulty in answering to the first question that the Executive should not refuse to give effect to an act of expatriation of a citizen of the United States.

But the legislative authority which declared it "to be a natural and inherent right of all people," has failed to define "expatriation," or to declare how or under what circumstances it may be exercised, what is essential to its full attainment, or what shall be the evidence of its accomplishment.

The absence of authoritative or of legislative definition on these points has given rise to much doubt and correspondence on the part of the Executive Departments of the Government.

Expatriation, I understand to mean, the quitting of one's country with an abandonment of allegiance, and with the view of becoming permanently a resident and citizen of some other country, resulting in the loss of the party's pre-existing character of citizenship. The quitting of the country must be real, that is to say, actual emigration for a lawful purpose, and should be accompanied by some open avowal or other attendant acts showing good faith, and a determination and intention to transfer one's allegiance.

It cannot be exercised by one while residing in the country whose allegiance he desires to renounce, nor during the existence of hostilities; no subject of a belligerent can transfer his allegiance or acquire another citizenship, as the desertion of one's country in time of war is an act of criminality, and to admit the right of expatriation "*flagrante bello*" would be to afford a cover to desertion, and treasonable aid to the public enemy.

It can be exercised only by persons of lawful age, and not by those who leave their country under the charge or conviction of crime, or other disabilities. And the same considerations of public policy which deny the right of any citizen in time of war, would seem to justify its

denial to any citizen while in the actual service of his country; and it will be remembered that Congress has asserted its right to denationalize its own citizens, and has defined one mode whereby the right of citizenship shall be forfeited, in the act of March 3, 1865, (13 Stat., p. 490,) which provides that, in addition to the other lawful penalties of desertion from the military or naval service of the United States, all persons who shall desert such service, or who, being enrolled, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States with intent to avoid any draft into the military or naval service, duly ordered, shall be deemed to have voluntarily relinquished and forfeited their rights of citizenship, or to become citizens, and shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

"*Question* 2. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than an act of expatriation?"

This question is understood to presuppose an actual change of residence; inasmuch as no person can make himself subject to another power while domiciled and resident within one to which he owes allegiance.

Chief Justice Marshall (2 Cranch, p. 119) says that when a citizen by his own act has made himself the subject of a foreign power, his situation is completely changed, and that the act certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance.

This opinion is in conformity with public policy and right, and is sustained by the general authority of the writers on public law.

The fourteenth amendment to the Constitution makes subjection to the jurisdiction of the United States an element of citizenship of the United States.

If, then, to this act of voluntary submission of himself to the sovereignty of another power be added a formal renunciation of American citizenship, I cannot see that it can be regarded otherwise than as an act of expatriation.

Hence, it would seem that the marriage of a female citizen of the United States with a foreigner, subject of a country by whose laws marriage confers citizenship upon the wife of its subject, and her removal to and residence in the country of her husband's citizenship, would divest her of her native character of an American citizen.

A Frenchman loses his native character by foreign naturalization, or by accepting office under a foreign government without permission of the State, or by so establishing himself abroad as to evidence an intention of never returning to his country.

The Austrian and Prussian emigrant who has obtained permission and quits his country "*sine animo revertendi*," forfeits the privilege of citizenship.

Bavarian citizenship is lost by the acquisition, without the special permission of the King, of "*jura indigenatus*" in another country, by emigration, and by the marriage of a Bavarian woman with a stranger.

Würtemberg citizenship is lost by emigration sanctioned by government, or by the acceptance of a public office in another state.

In Spain citizenship is lost by foreign naturalization, or by entering the service of another state without permission of government.

In Portugal, by foreign naturalization; by acceptance, without permission of the King, of a pension and of a decoration from a foreign state, and by judicial banishment.

"*Question* 3. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?"

Protracted absence from the country of one's allegiance is not of itself evidence of abandonment or of intentional change of allegiance.

But in answering this question with reference to the policy or practice of the United States, regard must be had to the change which late years have brought about with respect to the doctrine of perpetual allegiance, for a long time persistently maintained by Great Britain at least, and with reference to which doctrine many of the opinions and decisions of jurists and of courts have been framed, as also to the facility which the policy of this Government in its naturalization laws has extended to the subjects of other powers to throw off their previous allegiance and to the earnestness with which the United States, in all branches of its Government, asserts and enforces the right of expatriation and of renunciation of pre-existing citizenship.

The international treaties of naturalization of late years make an entire change of doctrine from that laid down by jurists, and held by courts, before the overthrow and abandonment of the doctrine of perpetual allegiance.

This question, therefore, presents itself for consideration somewhat in the nature of one of first impression, and to be answered with reference to a policy and to principles but recently of general acceptance, rather than to the dogmas of books.

If government assume the duty of protection, the citizen must be ready to support the government with his services, his fortune, and his life even, should the public exigencies be such as to require them.

He may reside abroad for purposes of health, of education, of amusement, of business, for an indefinite period; he may acquire a commercial or a civil domicile there; but if he do so sincerely and *bona fide animo revertendi*, and do nothing inconsistent with his pre-existing allegiance, he will not thereby have taken any step towards self-expatriation.

But if, instead of this, he permanently withdraws himself and his property, and places both where neither can be made to contribute to the national necessities, acquires a political domicile in a foreign country, and avows his purpose not to return, he has placed

himself in the position where his country has the right to presume that he has made his election of expatriation.

In several of the treaties of naturalization of this with other powers, the residence of a naturalized citizen in the land of his nativity without intent to return to the United States, is declared to work of itself a renunciation of the citizenship acquired by naturalization, and such intent may be held to exist when the residence continues for more than two years.

The fourteenth amendment of the Constitution makes personal subjection to the jurisdiction of the United States an element of citizenship. The avowed, voluntary, permanent withdrawal from such jurisdiction would seem to furnish one of the strongest evidences of the exercise of that right which Congress had declared to be the natural and inherent right of all people.

But in the absence of legislative definition of what constitutes "expatriation," and of the mode whereby it is to be effected, the experience of the Government has made manifest that while expatriation is declared to be a right, which may be converted into a fact, it is, like other facts, to be established in each individual case by evidence peculiar to itself; and each case to be decided upon its own merits.

"*Question* 4. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?"

It does not necessarily follow that a citizen has lost his right to the protection of his Government because he may have left its territories and resides abroad without apparent intent to return and without contributing to its support.

The intent to return, although not apparent, may be really and *bona-fide* entertained, and it does not necessarily follow that he is avoiding any obligation to his country because he does not contribute to its support. There may be no contributions at the time required of the citizen.

While thus resident or "domiciled" in another country he becomes amenable to its laws; but unless he assume some position or commit some act inconsistent with his pre-existing citizenship he does not forfeit that citizenship, or his right to look to his Government to extend to him all the protection which the nature of any wrong or injustice inflicted upon him by the Government within whose territories he may be domiciled may justify. In connection with this question, and with reference to the exertion of military and naval power for the protection or in favor of citizens of the United States who may be unjustly deprived of their liberty by the authority of foreign governments, it may be remarked that while the act of July 27, 1868, (15 Stat., 223,) declares it to be the duty of the President to demand the reasons of such imprisonment, it prohibits his use of the military or naval power of the Government to obtain his release.

"*Question* 5. What should constitute evidence of the absence of an intent to return, in such cases?"

By some of the recent naturalization treaties two years' continued residence of a naturalized citizen in the country of his nativity after his naturalization may be regarded as evidence of intent not to return to the United States. The strongest evidence of such intent would be the solemn declaration of intention of remaining abroad.

Naturalization, or taking preliminary steps to become naturalized in a foreign country, voluntary entrance into the civil or military service of another government, express renunciation, or acts amounting thereto, or indicating a fixed intention of renunciation of pre-existing citizenship, might be regarded as evidence of the absence of intent to return, which might also be otherwise indicated by a variety of facts or of circumstances.

When a person who has attained his majority removes to another country and settles himself there, he is stamped with the national character of his new domicile; and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period; and the presumption of law, with respect to residence in a foreign country, especially if it be protracted, is that the party is there "*animo manendi*," and it lies upon him to explain it.

It is probably not possible to lay down any general rule in answer to this question, and it results that each case must be decided upon its own merits.

"*Question* 6. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?"

A person of foreign birth once duly naturalized is a citizen, entitled to all the privileges and protection which may be claimed by one born within the territory of the United States. He may, however, divest himself of his acquired citizenship, or may lose his character as such, either in accordance with treaty regulations, or in the same mode by which a native-born citizen becomes expatriated or denationalized.

The act of July 27, 1868, (15 Stat. at Large, p. 223,) enacts that all naturalized citizens of the United States while in foreign states shall be entitled to and shall receive from this Government the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

The question recognizes the fact, already alluded to, that our treaties with some powers make a residence in the country of nativity, without intent to return to the country of adoption, to work a renunciation of the citizenship acquired by naturalization.

By some treaties no fixed period of residence in the country of nativity works of itself a renunciation of the acquired citizenship, while by others the intent not to return may be held to exist when the residence continues more than two years.

By the treaty with Great Britain of 13th May, 1870, the British subject naturalized in the United States after its date who renews

his residence within the British Dominion may, on his own application, and on such conditions as the British government may impose, be re-admitted to the character of a British subject. Residence alone, however long continued, without a direct application to be re-admitted to British citizenship, and without the assent thereto of the British governmet, will not rehabilitate him as a British subject.

The adoption in numerous treaties of this period of two years as that when the intent not to return to the United States may be held to exist on the part of the naturalized citizen who has returned to his native country, indicates that while the principle on which rests the right of protection while in foreign countries of the naturalized is the same with that of the native-born citizen, there is an appreciation of the strong proclivity to resume his original citizenship on the part of him who, having wandered from home, returns to find the attractions of early associations and of family ties enticing him at a period, perhaps, when the restlessness and spirit of adventure of the fresher years of life have passed, to rest and to end his days amid the scenes of his childhood or youth and among those who claim the strong ties of common blood.

Hence, probably, even when not regulated by treaty, the evidence would be more readily obtained to determine that a naturalized citizen who had returned to the country of his nativity should be deemed to have expatriated himself—or, perhaps it would be more proper to say, to have rehabilitated himself with his original citizenship—than to show that a native-born citizen had expatriated himself by the same period of foreign residence.

It not infrequently happens that naturalization is almost immediately followed by the return of the naturalized person to his native country, and his continued residence there, without having acquired property or established any permanent relations of family or of business in the United States.

Again, cases are of constant occurrence of naturalized persons who have resided for years in the country of nativity, manifesting no purpose of returning to the United States and exhibiting no interest in the Government, but who assert American citizenship only when called upon to discharge some duty in the country of their residence; thus making the claim to American citizenship the pretext for avoiding duties to one country, while absence secures them from duties to the other.

These are among the class of cases where the continued residence in the country of nativity, and the absence of apparent purpose of returning, may be taken at least as *prima facie* evidence of expatriation.

But generally, when not regulated by treaty, the mere absence of apparent purpose of returning to the United States on the part of a naturalized citizen who has returned to his native country and resided there for a series of years, does not of itself constitute evidence of his self-expatriation.

The presumption of law to which reference has already been made,

viz, that he is there *animo manendi*, applies, however, to him equally with the native-born citizen, and it rests with him as with the native-born to explain it; and here, again, in the absence of some prescribed rule, the circumstances attending each case must control its decision.

"*Question* 7. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?"

If born after the father has become the subject or citizen of another power, or after he has in any way expatriated himself, the children born abroad are to all intents and purposes aliens, and not entitled to protection from the United States.

The act of 10th February, 1855, (10 Stat. at Large, 604,) provides that "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be *at the time of their birth* citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however*, That the right of citizenship shall not descend to persons whose fathers never resided in the United States."

It will be noticed that the act professes to extend citizenship only to those born abroad whose fathers *at the time of their birth* are citizens.

Every independent state has as one of the incidents of its sovereignty the right of municipal legislation and jurisdiction over all persons within its territory, and may therefore change their nationality by naturalization, and this, without regard to the municipal laws of the country whose subjects are so naturalized, so long as they remain, or exercise the rights conferred by naturalization, within the territory and jurisdiction of the state which grants it.

It may also endow with the rights and privileges of its citizenship persons residing in other countries, so as to entitle them to all rights of property and of succession within its limits, and also with political privileges and civil rights to be enjoyed or exercised within the territory and jurisdiction of the state thus conferring its citizenship.

But no sovereignty can extend its jurisdiction beyond its own territorial limits so as to relieve those born under and subject to another jurisdiction, from their obligations or duties thereto; nor can the municipal law of one state interfere with the duties or obligations which its citizens incur, while voluntarily resident in such foreign state and without the jurisdiction of their own country.

It is evident from the *proviso* in the act of 10th February, 1855, viz, "that the rights of citizenship shall not descend to persons whose fathers never resided in the United States," that the law-making power not only had in view this limit to the efficiency of its own municipal enactments in foreign jurisdiction, but that it has conferred only a qualified citizenship upon the children of American fathers born without the jurisdiction of the United States, and has denied to them, what pertains to other American citizens, the right of transmitting citizenship to their children,

unless they shall have made themselves residents of the United States, or, in the language of the fourteenth amendment of the Constitution, have made themselves "subject to the jurisdiction thereof."

The child born of alien parents in the United States is held to be a citizen thereof and to be subject to duties with regard to this country which do not attach to the father.

The same principle on which such children are held by us to be citizens of the United States, and to be subject to duties to this country, applies to the children of American fathers born without the jurisdiction of the United States, and entitles the country within whose jurisdiction they are born to claim them as citizens and to subject them to duties to it.

Such children are born to a double character: the citizenship of the father is that of the child so far as the laws of the country of which the father is a citizen are concerned and within the jurisdiction of that country; but the child, from the circumstances of his birth, may acquire rights and owes another fealty besides that which attaches to the father.

"*Question* 8. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?"

Persons who have formally renounced their allegiance to the United States and have assumed the obligations of citizen or subject of another power—in other words, persons who have denationalized or expatriated themselves—are aliens to the United States, and can become citizens only by virtue of the same laws, and with the same formalities, and by the same process, by which other aliens are enabled to become citizens.

Having replied to the several questions submitted, I may be permitted to express my opinion of the necessity of legislation to define how and by what acts, whether of commission or of omission, or of both, United States citizenship is lost.

It has been shown that in some instances recent treaties provide one test; but even in these cases further legislation is needed to relieve the decision in each case of much embarrassment and of much doubt.

I have the honor to be, sir, with great respect, your obedient servant,

HAMILTON FISH.

No. 498.

The Secretary of the Treasury to the President.

TREASURY DEPARTMENT, *October* 20, 1873.

To the President:

I have the honor to acknowledge the receipt of your letter of the 6th August, 1873.

In this letter you desire my answer to eight questions, each of which bears in some form upon the question of expatriation.

These questions are as follows:

"I. The law-making power having declared 'that the right of expatriation is a natural and inherent right of all people, indispensable to the rights of life, liberty, and the pursuit of happiness,' (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

"II. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

"III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?

"IV. Ought the government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad without an apparent intent to return to them, and who do not contribute to its support?

"V. What should constitute evidence of the absence of an intent to return in such cases?

"VI. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?

"VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?

"VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?"

To reach a satisfactory answer to these questions it becomes necessary to consider with some precision whether a citizen of the United States could, before the passage of the act of July 27, 1868, expatriate himself; and, if so, what steps must be taken by him before he could carry his purpose in this regard into effect.

It is a rule of the common law that a natural-born subject owes an allegiance which is intrinsic and immutable. This allegiance cannot be forfeited, canceled, or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. Thus it is held that the natural-born subject cannot by an act of his own, nor by swearing allegiance to another, put off or discharge his natural allegiance to the country of his birth, for this natural allegiance was intrinsic and primitive and antecedent to the other, and cannot be divested without the concurrent act of the prince to whom it was first due. In McDonald's case, who was tried in 1846 for high treason, it was held that it was not in the power of any subject to shake off his allegiance and transfer it to another, nor could a foreign prince by naturalizing a British subject dissolve the bond of allegiance between that subject and the Crown. Entering into foreign service or refusing to leave that service when commanded to by the King is held to be a misdemeanor, and by a proclamation on the 16th of October, 1807, when the kingdom of Great Britain was menaced, all seamen who were natural-born subjects were, on pain of contempt, ordered to withdraw themselves and return home; and it was further declared that naturalization

did not alter their duty to their lawful sovereign. In later discussions, however, which have taken place between the British and American Governments, the practical application of the doctrine of indefeasible allegiance would seem to be confined to cases of *return* to Great Britain, and not to operate on their assumed obligation to their adopted country. In a note of Lord Palmerston, August 16, 1849, to Mr. Bancroft, minister to London, it is said: "It is well known that by laws of Great Britain no restraint can, except in very special cases, be placed upon the perfect liberty of every British subject to leave the realm when and for whatever period of time he chooses. So long as he remains in the United States, or in any other country, he is amenable to the laws of the country in which he resides." (Lawrence's Wheaton, page 927.)

Publicists assert a doctrine in this respect different from that established by the common law. They hold whenever a person attains his majority he becomes free to change his nationality and abandon his native country, unless there be some positive restraint by law, or unless his country be in distress, or in war, and stands in need of his assistance. Cicero regarded it as one of the firmest foundations of Roman liberty that the Roman citizen had the liberty to stay or abandon his residence at pleasure. "Haec sunt enim fundamenta firmissima nostræ libertatis, sui quemque juris retinendi et dimittendi esse dominum."

"The laws of European countries contemplate and provide for expatriation. Thus the code Napoleon provides 'that the quality of Frenchmen will be lost—first, by naturalization acquired in a foreign country; second, by acceptance without authority of the government of public functions conferred by a foreign government; third, by establishment in a foreign country without purpose of return."

Expatriation is also lawful in Spain and the Spanish-American Republics.

"In Prussia the law is similar, and in all the German states emigration is permitted, with the express leave from the government. This permission cannot be granted to males between seventeen and twenty-five years unless they produce a certificate from the commission for recruiting the army testifying that they do not propose to expatriate themselves for the sole purpose of evading their military obligations. (Section 17 of the law of 31st of December, 1842.) This certificate serves also as a guide when it is required to determine if there is reason to grant to minors authority to emigrate with their parents.

"In Austria emigration is not permitted without consent of the proper authorities; but the emigrant who has obtained permission and who quits the empire, *sine animo revertendi*, forfeits the privileges of an Austrian citizen.

"In Bavaria citizenship is lost—first, by the acquisition without the special permission of the King of the *jus indigenatus* in another country; second, by emigration; third, by the marriage of a Bavarian woman with a foreigner.

"In Würtemberg citizenship is lost by emigration authorized by the

government, or by the acceptance of a public office in another state." (Phillimore on International Law, loc. cit.)

"In Russia the quality of a subject is lost by a residence abroad; by voluntary expatriation without the intention of return; by disappearance. Every individual subject to the capitation-tax is considered to have disappeared who during ten years has not been heard of in the place of his domicile." (Rev. Etr. et Fr., tom. iii, p. 267).

"In Spain the quality of Spaniard is lost by acquiring naturalization in a foreign country, and by entering into the employment of another government without the consent of the King." (Cos Gayon, Diccionario de Derecho Administrativo Español, p. 360; Constitucion de la Monarquia Espanola, Art. 1, § 4.)

In the United States there were, prior to 1868, no laws which either expressly forbade or expressly authorized the expatriation of citizens of the United States, and it was a question which had commanded the serious consideration of the American Government, whether the English doctrine of perpetual allegiance obtained in its fullest extent in this country.

As far as the opinion of the executive branch of the Government can be ascertained from the discussions which arose, it would seem that the doctrine of perpetual allegiance was not in force in this country.

The views of that branch of the Government, in the year 1793, were thus expressed in a letter from Mr. Jefferson, then Secretary of State, to Mr. Morris: "Our citizens are certainly free to divest themselves of that character by emigrating, and other acts manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do."

Again, in the year 1794, Mr. Randolph, Secretary of State, thus expressed himself relative to the alleged expatriation of one Captain Talbot: "I cannot doubt that Captain Talbot has taken an oath to the French Republic, and at the same time I acknowledge my belief that no law of any of the States prohibits expatriation. But it is obvious that, to prevent frauds, some rules and ceremonies are necessary for its government. It then becomes a question, which is also an affair of the judiciary, whether those rules and ceremonies have been complied with." (Letter to M. Fanchet, October 28, 1797.)

General Cass, while Secretary of State, held that "the moment a foreigner becomes naturalized his allegiance to his native country is severed forever. He experiences a new political birth; a broad and impassable line separates him from his native country."

In a report, presented in December, 1851, by Mr. Webster, Secretary of State, in the case of John L. Thrasher, in obedience to a resolution of the House of Representatives, he says:

"There is no doubt that John L. Thrasher is a citizen of the United States by birth, nor is there any doubt that he has resided in the island of Cuba for a considerable number of years, engaged in business trans-

actions, sometimes as a merchant, and sometimes as the conductor of a newspaper press, although the precise period and duration of such residence are not known.

"In a letter from the governor of Cuba to Her Catholic Majesty's minister in the United States, it is stated that he has not only been a resident in Havana for a considerable time, but domiciled there by regular proceeding, and that he has in a solemn form sworn allegiance to the Spanish Crown.

"It appears that soon after the failure and breaking up of the late expedition of Narciso Lopez, in the invasion of Cuba by him and the troops under his command, Mr. Thrasher was arrested and tried for high treason or conspiracy against the Crown of Spain, condemned to eight years' imprisonment to hard labor, and sent to Spain in execution of that sentence.

"The first general question is as to this right of exemption from Spanish law and Spanish authority on the ground of his being a native-born citizen of the United States.

"The general rule of public law is, that every person of full age has a right to change his domicile, and it follows that when he removes to another place with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile, and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period.

"The Supreme Court of the United States has decided 'that a person who removes to a foreign country, settles himself there and engages in trade of the country, furnishes by these acts such evidence of an intention permanently to reside in that country as to stamp him with its national character,' and this undoubtedly is in full accordance with the sentiments of the most eminent writers as well as those of other high judicial tribunals on the subject. No government has carried this general presumption further than that of the United States, since it is well known that hundreds of thousands of citizens are now living in this country who have not been naturalized according to the provisions of law, nor sworn allegiance to this government, nor been domiciled among us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men actually living among us as inhabitants of the United States to learn that by removing to this country they had not transferred their allegiance from the government of which they were originally subjects to this Government."

* * * * * * *

In Martin Koszta's case, a Hungarian by birth, who had on the 31st of July, 1852, made a declaration of his intention to become a citizen of the United States, and who while in Turkey on private business of a temporary character was seized, at the instigation of the consul-general of Austria, and confined in irons on board the Austrian brig-of-war the Huzar, and

released on the demand of Captain Ingraham, who intimated that he should resort to force if the demand was not complied with by a certain hour, the principles which apply to allegiance and expatriation are there stated by Mr. Secretary Marcy in answer to Mr. Hülseman's demand that the President should surrender Koszta, disavow the acts of the American captain, and give satisfaction for the alleged outrage on Austria.

"There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign. By others it is considered a political connection in the nature of a civil contract, dissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is that the citizen or subject having faithfully performed the past and present duties resulting from his relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth or adoption, seek through all countries a home, and select anywhere that which offers him the finest prospect of happiness for himself and posterity. When the sovereign power, wheresoever it may be placed, does not answer the ends for which it is bestowed, when it is not extended for the general welfare of the people, or has become oppressive to individuals, this right to withdraw rests on as firm a basis, and is similar in principle, to the right which legitimates resistance to tyranny."

It is said that the naturalization laws of the United States proceed upon the principle that every individual has a right to change his allegiance, and such has been the language of diplomatic communications, in accordance with the doctrine of publicists, that whenever a child attains his majority according to the law of his domicile or origin, he becomes free to change his nationality. In the instructions from Mr. Cass to the minister at Berlin, July 8, 1859, it is said "the right of expatriation cannot at this day be doubted or denied in the United States. The idea has been repudiated ever since the origin of our Government, that a man is bound to remain forever in the country of his birth, and that he has no right to exercise his free will, and consult his own happiness by selecting a new home. The most eminent writers on public law recognize the right of expatriation. This can only be contested by those who, in the nineteenth century, are still devoted to the ancient feudal law with all its oppression. The doctrine of perpetual allegiance is a relic of barbarism which has been gradually disappearing from Christendom during the last century."

The question of expatriation has been frequently discussed by the courts of the United States, and though no judicial determination has, so far as I know, ever been had, I think that a review of these discussions will show what is the opinion of those tribunals.

The question first arose in the case of Talbot *vs.* Janson, decided in

August, 1795. Talbot, an American by birth, captured a vessel and cargo belonging to citizens of the United Netherlands, a nation at peace with the United States. Talbot claimed that he had been admitted a citizen of the French republic, had therefrom received a commission as captain, and as such had taken as prize the vessel in question as the property of subjects of the United Netherlands with whom France was at war.

The case came by appeal to the Supreme Court. In deciding it one of the judges (Iredell, J.) said: "The first point to be considered is whether Talbot, at the time of receiving his commission, or at the time of the capture, was a French citizen. This involves the great question as to the right of expatriation, upon which so much has been said in this court. Perhaps it is not necessary it should be explicitly decided on this occasion, but I shall freely express my sentiments on the subject.

"That a man might not be a slave; that he should not be confined against his will to a particular spot because he happens to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidentally attached, when he can better his situation elsewhere, much less when he must starve in one country and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world clearly recognize.

"The only difference of opinion is as to the proper manner of executing this right."

The conclusion of the learned judge is, that the right of expatriation ought not to be restrained, but that it can be permitted only by an act of legislature, which, as the guardian of the public interest, is the only power that can take cognizance of the subject. It is not a natural right. As every man is entitled to claim the rights of society, he is in turn under a solemn obligation to discharge to society all his duties faithfully. If, therefore, he is in the exercise of a public trust, he cannot leave his country until he has fully discharged it. If he owes money he ought not to quit the state and carry his property with him without the consent of his creditors. Though a man may be naturalized abroad, yet, if he has not been discharged from his allegiance at home, it will remain, notwithstanding disagreeable dilemmas may be occasioned by the taking upon himself this double citizenship.

The judgment of the court was that, under the circumstances of the case, Talbot must be considered a citizen of the United States, but they gave no decided opinion upon the question of expatriation. The opinion, however, seems to have been that though the general right of expatriation existed, it could not be exercised without the sanction of the legislature.

The point arose again in Isaac Williams's case, in the circuit court of the United States, in 1797. Williams was indicted for accepting a commission under the French government, and under the authority thereof committing acts of hostility against Great Britain. His defense was

that he had expatriated himself and become a citizen of France. Upon the question of expatriation then raised, Judge Ellsworth is said to have held that the common law of this country remains the same as it was before the Revolution. The question, therefore, was to be settled by the application of two principles. "One is that all the members of a civil community are bound to each other by compact; the other is, *that one of the parties to this compact cannot dissolve it by his own act.*" The compact is that society shall protect its members, who on their part are bound, at all times, to be obedient to it, and faithful to its defense. The necessary *result is that a member cannot dissolve the compact without the consent or default of the community.* The most visionary writers do not contend that a citizen may at any and at all times renounce his own and join a foreign country, and the fact that the government permits the naturalization of foreigners implies no consent on its part "that its own citizens should expatriate themselves."

The question again arose in the Supreme Court of the United States in the case of the Charming Betsey, and though the point was earnestly argued the court again avoided expressing an opinion upon it. They say, "Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character *otherwise than in such a manner as may be prescribed by law*, is a question which it is not necessary at present to decide."

This was in 1804. In 1805, Judge Washington, in the case of United States *vs.* Gillies, heard in the circuit court at Philadelphia, said: "I do not mean to moot the question of expatriation founded in the self-will of a citizen. It may suffice for the present to say that *I must be more enlightened on this subject than I have yet been before I can admit that a citizen of the United States can throw off his allegiance and his country without some law authorizing him to do so.* It is true a man may obtain a foreign domicile which will impress upon him a national character for commercial purposes, and may expose his property found upon the ocean to all the consequences of his new character, in like manner as if he were in fact a subject of the government under which he resides. But he does not on this account lose his original character, or cease to be a subject or citizen of the country where he was born, and to which his perpetual allegiance is due."

The question was again presented to the Supreme Court of the United States in 1822, in the case of the Santissima Trinidad; but Judge Story, in delivering the opinion of the court, allows the same uncertainty to remain in respect to the solution of it. "Assuming," he says, "for the purpose of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country, as to which we give no opinion, it is perfectly clear that this cannot be done without a bona-fide change of domicile under circumstances of good faith. It can never be asserted as a cover of fraud

or as a justification for the commission of crime against the country, or for a violation of its laws when this appears to be the intention of the act. It is unnecessary to go further into the examination of the doctrine. It will be sufficient to ascertain its precise nature and limits when it shall become the leading point of a judgment of the court."

In the case of Stoughton *vs.* Taylor, however, determined in the circuit court of the United States, held at New York about 1828, a more liberal view of the right of expatriation was taken.

In this case it is said, "The general evidence of expatriation is actual emigration, with other concurrent acts, showing a determination and intention to transfer allegiance.

"The evidence in this case is emigration more than twelve years since, swearing allegiance to another government eight years ago, entering into its service and continuing in it uniformly from that time to this. On this evidence I cannot hesitate to say that the defendant has lost his character as a citizen of the United States; he has abandoned his rights as such; he cannot now claim them, and cannot be called upon to perform any of the duties incident to that character. *It may, perhaps, be said that the government* to which he has sworn allegiance is not independent, and that the act is therefore inoperative and void. If that were so, yet the fact of emigration and the evidence of the *animus manendi*, the intention to remain abroad and to abandon his citizenship here, *as manifested by his oath of allegiance to another government claiming to be independent*, are sufficient to sustain his expatriation. In whatever light the government to which he professes to belong may be viewed by other nations, *it is independent in fact*, and may forever remain so, although not recognized in form."

Finally, in 1830, in the case of Inglis *vs.* Trustees of Sailors' Snug Harbor, the Supreme Court of the United States say: "It cannot, I presume, be denied but that allegiance *may be dissolved by the mutual consent of the Government and its citizens or subjects.* The Government may release the governed from their allegiance. This is ever the British doctrine." And in the case of Shanks *vs.* Dupont, decided in the same court, Judge Story, who delivered the opinion, said: "The general doctrine is *that no persons can, by any act of their own, without the consent of the Government, put off their allegiance and become aliens.*" Judge Thompson, who delivered a dissenting opinion, not, however, upon this point, said: "There is not a writer who treats upon the subject who does not qualify the exercise of the right to emigrate, much more that of putting off or changing an allegiance, with so many exceptions as to time and circumstance as plainly to show that it cannot be considered as an inalienable or even perfect right. A state of war, want of inhabitants, indispensable talents, transfer of knowledge and wealth to a rival, and various other grounds are imagined by writers on public law, upon which nature may lawfully and reasonably limit and restrict the exercise of individual volition in putting off allegiance. All this shows that whenever an indi-

vidual proposes to remove, a question of right or obligation arises between himself and the community, which must be decided in some mode, *and what other mode is there but a reference to the positive legislation or received principles of the society itself?* It is, therefore, a subject for municipal regulation."

The cases cited comprise all which have arisen in the Supreme or other courts of the United States in which the question of expatriation has been discussed, and it will be seen that they have studiously avoided a decision of it.

The State courts, however, have not been so reticent in expressing an opinion on this question.

As early as 1813 Chief Justice Parsons, in the case of Anslie *vs.* Martin, said: "This claim of the commonwealth to the allegiance of all persons born within its territories may subject some persons who, adhering to their former sovereign and residing within his dominions, are recognized by him as his subjects, to great inconveniences, especially in time of war, when the opposing sovereigns may claim their allegiance. But the inconvenience cannot alter the law of the land. Their situation is not different in law, whatever may be their equitable claims, from the situation of those citizens of the commonwealth who may be naturalized in the dominion of a foreign prince. *The duties of these persons, arising from their allegiance to the country of their birth, remain unchanged and unimpaired by their foreign naturalization. For by the common law no subject can expatriate himself.*"

As far, therefore, as an opinion has been expressed in Massachusetts, the vigorous doctrine of the common law governs. Foreign naturalization is no evidence of expatriation.

Two years before this suit the contrary opinion was expressed by the supreme court of appeals in Virginia. It was held in that State, in the case of Murray *vs.* McCarty, that nature had given to all men the right of relinquishing at pleasure the society in which birth or accident had thrown them. The court say: "It is believed that this right of emigration or expatriation is one of those *inherent rights* of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity. But although municipal laws cannot take away or destroy this right, they may regulate the manner and prescribe the evidence of its exercise; *and in the absence of the regulations, juris positivi, the right must be exercised according to the principles of general law.*"

A temporary absence, however, will not divest a man of the character of citizen or subject of the State or nation to which he may belong. *There must be a removal, with an intention to lay aside that character, and he must actually join himself to some other community.*

The State of Virginia also, by an act of the legislature, has defined citizenship, and has in terms provided for expatriation.

This act declares that all free white persons, born in that or any other State, all aliens, being free white persons naturalized under the laws of

the United States, who become residents, all persons who were citizens under former laws, and all children, wherever born, whose father—or, if he be dead, whose mother—shall be a citizen of the State at the time of the birth, shall be deemed citizens of the State.

And it provides that, whenever a citizen, by deed in writing, proved in court or by open declaration made in court and entered of record, shall declare that he relinquishes the character of a citizen and shall depart out of the State, he shall be considered as having exercised the right of expatriation, and shall thenceforth be deemed no citizen thereof.

The decision in Murray *vs.* McCarty was followed by the court of appeals in Kentucky, in 1839, and the right of expatriation declared in the strongest manner: "Whatever may be the speculative or practical doctrine of the feudal governments or ages, allegiance in these United States, whether local or national, is, in our judgment, altogether conventional, and may be repudiated by the native as well as by the adopted citizen *with the presumed concurrence of the Government without its formal or express sanction.* Expatriation may be considered a practical and fundamental doctrine of America. American history, American institutions, and American legislation all recognize it. It has grown with our growth and strengthened with our strength. The political obligations of the citizen and the interests of the republic may forbid a renunciation of allegiance by his mere volition or declaration at any time and under all circumstances; and therefore the Government, for the purpose of preventing absence and securing the public welfare, may regulate the mode of expatriation. *But when it has not prescribed any limitation on the right, and the citizen has in good faith abjured his country and become a subject of a foreign nation,* he should as to his native Government be considered as denationalized, especially so far as his civil rights may be involved, and at least as far as that Government shall seem to acquiesce in his renunciation of his political rights and obligations."

This certainly is a plain enunciation of the principle. Expatriation is a fundamental right, but circumstances may prevent the exercise of it, and the legislature may therefore regulate it, *but unless they do*, it is to be exercised at the discretion of the citizen.

In the case of Lynch *vs.* Clark, decided in New York, in 1844, the court say, notwithstanding the conclusions of Mr. Chancellor Kent, that the doctrine of expatriation does not stand upon the same foundation as that of allegiance by birth, and does not follow from the adoption of the latter the common-law rule, "the right to expatriate was recognized in Pennsylvania and Virginia while they were colonies. The constitution of Pennsylvania prohibited laws restraining emigration from the State, and Virginia enacted a law as recently as the year 1792 providing for expatriation and prescribing its forms. Kentucky followed Virginia in this as well as in many other questions of national policy. This diversity prevailing in the colonies and States prior to 1784 would afford strength to the argument that in the National Government the common-law rule of perpetual allegiance did not prevail."

As late, however, as 1863, the law upon this question seems to have been in doubt and unsettled in that State. In Ludlam *vs.* Ludlam it is said, "that the right of expatriation on the part of citizens of the United States, without the consent of the Government, has never been recognized by the courts of this country or by any of the writers upon public law." The court, however, do not admit unqualifiedly the statement of Chancellor Kent, that the better opinion would seem to be that a citizen cannot renounce his allegiance, and that the rule of the English common law remains unaltered in this country. They say, "whether this statement of the law is to be considered as in all respects correct, may perhaps admit of doubt, as some courts and statesmen have been disposed to regard the right of expatriation as existing where the government has taken no steps to prohibit or limit it." On the other hand, they do not fully concur in the opinion expressed by the court of appeals of Kentucky, and by Secretary Cass, that a citizen has a right to renounce his allegiance at pleasure. They say that the argument of Mr. Rutherford possesses much force, which is in substance that if an individual was at liberty to leave the State when he pleased, civil society would be nothing but a rope of sand; every member of society would be at liberty either to continue in it and advance its general interests, or leave it in order to advance a separate interest of his own. But the great end of forming civil society is to promote the common good and to guard against a common mischief. Certainly, therefore, the nature of civil society can never allow this liberty to its members, *because it is inconsistent with the end* which civil society proposes to itself; and they add that "without, however, pursuing the subject further, it is sufficient for the present case, that all writers, including those who would give the greatest license to the citizen in the exercise of the power of expatriation, agree that no person casts off his allegiance to his native country before he becomes a citizen or subject of another country."

In Jackson *vs.* Burns, decided in the supreme court of Pennsylvania, Chief Justice Tilghman speaks of a "principle not compatible with the constitution of Pennsylvania or her sister States, that is to say, that no man can, even for the most pressing reasons, divest himself of the allegiance under which he was born."

In Beavers *vs.* Smith, decided by the supreme court of Alabama, in 1847, it is said that "it would seem to follow, necessarily, from our naturalization laws, that our people can emigrate and transfer their allegiance at their pleasure to a foreign government, as our laws do not require the consent of the former sovereign to the expatriation of a foreigner as a condition of his becoming a citizen of the United States. They hold, however, that a mere removal is not enough, and that the general question is unsettled.

In Fish *vs.* Stoughton, where the defendant, a British subject, became a naturalized citizen, and took the oaths of abjuration and allegiance to

the State of New York in 1794, and in 1795 took an oath of allegiance to the King of Spain, and was appointed a consul by the Spanish King, and continued to reside in New York without ever changing his domicile, he was still to be considered an American citizen. Without considering the general right of expatriation, the court were of the opinion that to divest himself of his character of an American citizen he must at least *change his domicile.*

There is this much to be said of the question, in the light of the conflicting opinions declared by the different courts. It is evident that the common law of England, based upon allegiance in the feudal sense, arising out of the doctrine of tenures, is not the law here. The right which that law absolutely denies, viz, the right of expatriation, is conceded in all. The question which remains undecided is whether this right can be exercised without legislative enactment. As a result of the cases cited, it is not, perhaps, unreasonable to hold that when the case is presented to the highest court of judicature it will, inasmuch as it has abandoned the fundamental principle of the common law, refuse to be guided by its strict teachings, and under the influence of more liberal views than feudal ones, hold *that, in the absence of legislation,* a citizen may, with certain necessary limitations, abjure his own and become, in accordance with its laws, a citizen of another country.

"It is the recognized principle of the law of nations that all can change their primitive nationality according to their convenience. This principle, admitted by all the world, and in virtue of which every individual may renounce the nationality which birth combined with parentage gives him, does not release him who avails himself of it of the obligations which he owes to his country. So that the citizen or subject who, without authorization of his government, accepts the nationality of a foreign state, may be called upon for the performance of the personal charges imposed upon him by his primitive country, in the form which the law established. Thus a deserter from the military service, who becomes naturalized in the state to which he flies, though not subject to extradition without special treaty authorizing it, if nevertheless he comes within the jurisdiction of the authorities of his primitive country, cannot be reclaimed by his new one, but remains bound to fulfill the obligations of his service.

While the law of nations concedes to individuals the liberty of changing their nationality, it also empowers a state to restrict this faculty in certain circumstances, as in case of war and others, in return for the services and protection which it bestows upon the citizen or subject; and when he changes his nationality in contempt of the laws, he gives occasion for the disregard of his new nationality." (Derecho Internacional, tom. 1 p. 319.)

In October, 1856, the Hon. Caleb Cushing, then Attorney-General, in a very elaborate review of the subject, expressed the opinion that the right of expatriation exists, and may be freely exercised by the citizens

of the United States, holding that in the absence of legislation the consent of the government is to be implied. In this connection he says: "of course the citizen cannot apply such implied consent to any act of pretended emigration which is itself a violation of the law either public or municipal, as in the case of illegal military enterprises, nor by it can he escape the punishment of crime or the performance of local contracts, nor appeal to it as a mask to cover desertion or treasonable aid of the public enemy. I am not prepared to say that the right of a citizen of the United States to expatriate himself, implied in the absence of any prohibition, may not be exercised in time of war, but if so it would have to be done with attendant circumstances clearly showing good faith in order to be justifiable, and it is not easy to see how citizenship could be transferred in time of war to the foreign enemy in such a way as to escape reprehension if the party should afterwards return to the United States. And whether in peace or war, the expatriation would have to be an actual one by foreign residence, and with authentic renunciation of the pre-existing citizenship. Under the circumstances, and with the conditions thus indicated, and subject to such others as the public interest might seem to Congress to require to be imposed, it seems to me that the right of expatriation exists and may be freely exercised by the citizens of the United States."

Again, in the case of Christian Ernst, the right of expatriation was asserted by the Attorney-General: "Christian Ernst was a native of Hanover, and emigrated to this country in 1851, when he was about nineteen years of age. In February, 1859, he was naturalized, and in March, after procuring a regular passport, he went back to Hanover on a temporary visit. He had been in the village where he was born about three weeks, when he was arrested, carried to the nearest military station, forced into the Hanoverian army, and there he is at the present time, unable to return home to his family and business, but compelled against his will to perform military service."

Upon this state of facts the Attorney-General says: "The natural right of every free person, who owes no debts and is not guilty of any crime, to leave the country of his birth in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another allegiance in its place—the general right, in one word, of expatriation, is incontestable. I know that the common law of England denies it; that the judicial decisions of that country are opposed to it; and that some of our courts, misled by British authority, have expressed, though not very decisively, the same opinion. But all this is very far from settling the question. The municipal code of England is not one of the sources from which we derive our knowledge of international law. We take it from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations. All these are opposed to the doctrine of perpetual allegiance. It is too injurious to the general interests of mankind to be tolerated; justice denies that men should

either be confined to their native soil or driven away from it against their will.

"*Expatriation* includes not only *emigration* out of one's native country, but *naturalization* in the country adopted as a future residence.

"When we prove the right of a man to expatriate himself, we establish the lawful authority of the country in which he settles to naturalize him if its government pleases. What, then, is naturalization? There is no dispute about the meaning of it. The derivation of the word alone makes it plain. All lexicographers and all jurists define it in one way. In its popular, etymological, and legal sense, it signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject."

Such was the law before the passage of the act of July 27, 1868.

The just conclusion from it all is, that a citizen of the United States in time of peace, not deserting a public trust, nor being a fugitive from justice, by renouncing allegiance to this, and becoming in good faith a citizen of another country, in accordance with the laws thereof, is denationalized.

The act of July 27, 1868, therefore is, so far as the right of expatriation is concerned, only declaratory of what was the law of the land.

But the act does not attempt to define what steps must be taken by a citizen before he can be held to have become denationalized.

This being so, whether an act of expatriation has been accomplished in any particular case, must be left to the decision of the Executive or the courts, when such case shall arise, and their decision must be based substantially on the law as it is set forth in the cases cited. Upon an application of the principles established by these cases, I have to say, in answer to the first question asked by you, that the law-making power having declared by the act of July 27, that expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness, the Executive, when satisfied that a citizen, under the limitations I have set forth, has become denationalized, should not refuse to give effect to such an act of expatriation.

Upon an application of the same rules, the second question must be answered in the affirmative, if "voluntary submission to the sovereignty of another power" is understood to be the becoming a citizen of another power in accordance with the naturalization laws thereof.

But an expatriation cannot, I think, be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return only.

The rule of public law is that every person of full age has a right to change his domicile, and it follows that when he removes to another place with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile. (Thrasher's case.)

Under the liberal influence of commerce, the strict rule of the common law with regard to allegiance has been relaxed; and thus, though a natural-born subject cannot throw off his allegiance by change of domicile merely, and is always amenable for criminal acts against his native country, yet for commercial purposes he may acquire the rights of a citizen of another country by change of domicile. And the place of domicile determines the character of the party as to trade. (2 Kent, 49.)

Under the state of facts set out in the third question, an American citizen would therefore undoubtedly obtain a foreign domicile, which would impress upon him a national character for *commercial purposes* only, in like manner as if he were a subject of the government under which he resided, *without losing on that account his original character, or ceasing to be bound by the allegiance due to the country of his birth.* (1 Peters, C. C., 161; 2 Cranch, 120.)

The principle that for all commercial purposes the *domicile* of the party, without reference to the place of his birth, becomes the test of national character, has been repeatedly admitted in the courts of the United States. (Sloop Chester, 2 Dallas, 41; Murray *vs.* Schooner Betsey, 2 Cranch, 64; Manly *vs.* Shattuck, 3 Cranch, 488; Livingston *vs.* Maryland Insurance Company, 7 Cranch, 506; the Venus, 8 Cranch, 253; the Frances, 8 Cranch, 363.)

But this national character which a citizen acquires by residence "may be thrown off at pleasure by a return to his native country, or even by turning his back on the country in which he had resided on his way to another." To use the language of Sir William Scott, "it is an adventitious character gained by residence, and which ceases by non-residence."

Such was the opinion of the court in the case of the Venus, (8 Cranch, 280,) and in United States *vs.* Guillem, (11 Howard, 47.)

Such is now the rule in England. It is there held that a British subject may acquire the rights, for commercial purposes, of a citizen of another country, and the place of the domicile determines the character of the party as to trade. (Wilson *vs.* Maryat, 8 T. R., 31.)

In the case of the Danaos, cited in 4th Robinson Adm., 255, the rule was declared that an Englishman residing in a neutral country was entitled to the privileges of a neutral character, and a British-born subject resident in Portugal was allowed the benefit of the Portuguese character *so far as to* render his trade with Holland, then at war with England, not impeachable as an illegal trade.

In the case of the Indian Chief, (3 Rob. Adm., 12,) Mr. Johnson, a citizen of the United States, was domiciled in England, and engaged in a mercantile enterprise to the British East Indies, prohibited to British subjects, but allowed to American citizens.

In delivering judgment the court said: "Taking it to be clear that the national character of Mr. Johnson was founded in residence only, it must be held that from the moment he turned his back on the country where he resided, on his way to his own country, he was in the act of

resuming his original character, and must be considered an American. The character that is gained by residence ceases by non-residence. It is an adventitious character, and no longer adheres to him from the moment that he puts himself in motion *bona fide* to quit the country *sine animo revertendi.*"

Such being the law, the fourth question becomes one of easy solution. It must be considered, however, with regard to two classes of citizens, viz, natural-born and naturalized.

It has been seen that a mere residence abroad, with no apparent intention of returning, does not denationalize an American-born citizen; it only impresses upon him a national character for commercial purposes. He is still bound by the allegiance due to the country of his birth. By virtue of that allegiance *that* country can demand his services whenever they are needed. For this reason he is, it seems to me, entitled to its protection.

In the case of the Charming Betsey, (2 Cranch, 120,) Chief Justice Marshall said: "The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of our Government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor would be considered a justifiable interposition."

This doctrine of the Supreme Court seems to have been regarded by the Department of State as the true rule, and was declared to be the rule of the Government in the most emphatic manner by Mr. Webster, in the case of John S. Thrasher.

There seems, however, to be a doubt with regard to the right of the United States to protect a naturalized citizen when he returns to the country of his birth, the doctrine of the State Department seeming to be, up to the year 1852, that if a foreign state *did not admit the right of one of its subjects to sever his allegiance*, it may lawfully claim his services when found within its jurisdiction, and that the Government of the United States will not interfere to protect him.

The question first arose, I think, in 1840, in the case of a Prussian who had become a naturalized citizen of the United States, and who claimed to be exempt from military draft on his return to his native country.

Mr. Wheaton, at that time the American minister, in reply to the party, wrote that it was not in his power to protect him. "Had you remained in the United States, or visited any other foreign country except Prussia on your lawful business, you would have been protected by the American authorities at home and abroad in the enjoyment of all your rights and privileges as a naturalized citizen of the United States. But having returned to the country of your birth, *your natural* domicile and natural character revert, (so long as you remain in the Prussian dominions,) and you were bound in all respects to obey the laws exactly as if you had never emigrated."

These views were adopted by Mr. Everett, Secretary of State, in instructions to Mr. Barnard, January 14, 1853. He said: "If a Prussian subject chooses to emigrate to a foreign country without obtaining the certificate which alone can discharge him from the obligation of military service, he takes that step at his own risk. He elects to go abroad under the burden of a duty which he owes to his government. His departure is in the nature of an escape from her laws, and if at any subsequent period he is indiscreet enough to return to his native country, he cannot complain if those laws are executed to his disadvantage. His case resembles that of a soldier or sailor enlisted by conscription or other compulsory process in the army or navy. If he should desert the service of his country and thereby render himself amenable to the military laws, no one would expect that he could return to his native land and bid defiance to its laws, because in the mean time he had become a naturalized citizen of a foreign state."

This view was accompanied by a note from Mr. Webster when Secretary of State, in June 1852, to the effect that if a government of a country does not acknowledge the right of natives of that country to renounce their allegiance, it may lawfully claim their services when found within its jurisdiction.

A distinction was taken, however, in 1859, by the State Department, which limited this view, and which confined the foreign jurisdiction in regard to naturalized citizens to such of them *as were in the army or actually called into it* at the time they left the country; that is, to the case of actual desertion or refusal to enter the army after having been regularly drafted and called into it by the government to which at the time they owed allegiance.

In accordance with this view, Mr. Faulkner, minister of the United States at Paris in 1860, said, in reference to the case of a naturalized citizen who had emigrated before the period of military service, "the doctrine of the United States is that the naturalized emigrant cannot be held responsible, upon his return to his native county, for any military duty the performance of which has not been actually demanded of him prior to his emigration. A prospective liability to service in the army is not sufficient. The obligation of contingent duties depending upon time, sortition, or events thereafter to occur, is not recognized. To subject him to such responsibility, it should be a case of actual desertion or refusal to enter the army after having been actually drafted into the service of the government to which he at the time owed allegiance."

The Secretary of State under Mr. Buchanan made the same distinction between the contingent liability of those naturalized citizens who left the country of their origin before the age of military service without the consent required by law, and those who escaped after they were actually enrolled. He claimed that the former were, irrespective of the obligations arising from the contingent liability, which in the interim

had become complete, entitled even in their native country to the full protection of American citizens.

This doctrine is in entire harmony with the views of the Attorney-General, expressed in 1859, in the case of Christian Ernst, and may, I think, be considered the views of the Government of the United States. (9 Opin.)

That officer says that a naturalized citizen who returns to his native country "is liable, like anybody else, to be arrested for a debt or crime; but he cannot rightfully be punished for the mere non-performance of a duty which is supposed to grow out of that allegiance which he has abjured and renounced. If he was a deserter from the army, he may be punished when he goes back, because desertion is a crime. On the other hand, if he was not actually in the army at the time of his emigration, but merely liable like other members of the state to be called on for his share of military duty, which he did not perform because he left the country before the time for its performance came around, he cannot justly be molested."

In deciding the question contained in your fifth interrogatory, viz, what should constitute evidence of the absence of an intent to return, I must first consider whether, in any given case, a domicile has been acquired in another country, for the reason that the evidence of an absence of intent to return can only be determined by the fact whether a foreign domicile has been acquired. If such a domicile has been acquired, the intent to return is gone; if not, the intent to return still remains.

Whether or not a domicile has been obtained, is purely a question of fact.

It is said by the Supreme Court in the case of the Venus, before referred to, that whether a person had sufficiently made known his intention of fixing himself permanently in a foreign country, must depend upon all the circumstances of the case. "If he has made no express declaration on the subject, and his secret intention is to be discovered, his *acts* must be attended to as affording the most satisfactory evidence of his intention. On this ground it is that the courts of England have decided that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes by these acts such evidence of an intention permanently to remain there as to stamp him with the national character of the state where he resides."

It will be seen from my discussion of the proposition contained in the third interrogatory that the doctrine once held was that a naturalized citizen could not be protected by the Government of the United States, if he returned to the country of his birth, on the ground that his native domicile and national character reverted. It is also seen that this doctrine has of late been a good deal modified—the foreign jurisdiction over a naturalized citizen being limited to those who were in the army or drafted, or were owing some accrued obligation at the time they left their native country.

A native or a naturalized citizen, therefore, may now go forth with equal security over every sea and into every land, including the country where the latter was born. They are both American citizens, and their exlusive allegiance is due to the Government of the United States. One of them owed no fealty elsewhere; the other by his naturalization renounced and abjured all allegiance to the sovereignty whose subject he had been. This worked a dissolution of every political tie which bound him to his native country. (Ernst's case, 9 Opin. Att'ys-Gen., 357.)

This being so, it follows that if a naturalized citizen returns to his native country, and resides there for a series of years with no apparent purpose of returning, he only acquires, just as a native citizen of the United States would, a national character for commercial purposes, without losing his character of citizenship acquired by naturalization or ceasing to be bound by the allegiance thereby due from him. His original character does not under these circumstances revert, and therefore he does not become expatriated.

The sixth question must, therefore, be answered in the negative.

7th. Are the children born abroad of a citizen who has expatriated himself citizens of the United States, and entitled to its protection?

By the common law a person born out of the dominions and jurisdiction of the United States, and under the actual obedience of a foreign king, is an alien, *though his parents were American citizens.*

In Calvin's case it was held that "an alien is a subject that is born out of the ligeance of the king and under the ligeance of another." (7 Rep., 16.)

"There be regularly three incidents to a subject born: that the parents be under the actual obedience of the king; that the place of the birth be within the king's dominion; and that the time of his birth is chiefly to be considered, for he cannot be a subject born of one kingdom that was born under the ligeance of a king of another kingdom." (7 Rep., 17.)

In Doe *vs.* Jones (4 Dumford and East, 308) it is said "the character of a natural-born subject, anterior to any of the statutes, was incidental to birth only; whatever were the situation of his parents, the being born within the allegiance of the king constituted a natural-born subject."

Such was the common law of the United States anterior to the passage of the act of 1804.

Chancellor Kent says, "An alien is a person born out of the jurisdiction and allegiance of the United States. There are some exceptions to this rule, he says, by the ancient English law, as in the case of the children of public ministers abroad, (provided their wives be English women,) for they owe not even a local allegiance to any foreign power. So also *it is said* that in every case the children born abroad of English parents were capable of inheriting as natives, if the father went and continued abroad *in the character of an Englishman with the consent of the sovereign.*"

This last proposition is an extremely doubtful one.

Chancellor Kent gives as authority for it only the following cases, viz: Hyde *vs.* Hill, Cro. Eliz. 3, Bro. Abr., tit. Descent, pl. 47, and tit. Denizen, pl. 14. But it is clear, from what he says further on, that little reliance can be placed upon this alleged doctrine. For in commenting upon the fact that the period will soon arise when there will be no statutory provisions in the United States in relation to the status of children born abroad of American parents, from the fact that the act of 1804 in relation to this question not being prospective will soon be inoperative, he says such children will be obliged to resort to the dormant and *doubtful principles of the English common law.*

The rule, however, laid down in Calvin's case, and in Doe *vs.* Jones, makes it clear that such children would be aliens in the absence of a statute to the contrary.

It was because such was the common law that there arose the necessity in England of the statute of 25 Edw. In relation to this statute Chancellor Kent says, "It appears to have been made to remove doubts as to the certainty of the common law on this subject."

This statute settled the law in England.

But in the United States the rule of the common law was supposed still to have effect. For Congress in 1804 enacted that "the children of persons *who now are or have been* citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered citizens of the United States." The act was not prospective, however, and its benefits were soon lost.

In 1854 the question again arose, in the absence of every statutory provision, what was the condition of children of American citizens born abroad?

In an article published in February, 1854, in the American Law Register, and attributed to Mr. Horace Binney, it was contended with great force that such children were aliens. All the authorities on the question were reviewed, the position taken by Chancellor Kent that such children might be citizens criticised, and the conclusion I have stated reached. The view contained in this article seems to have been adopted by Congress, for soon after its appearance a bill passed, based substantially upon the idea contained in the article referred to.

A case involving this question has, however, since arisen in New York, and the doctrine of Chancellor Kent maintained. (See Ludlam *vs.* Ludlam, 26 N. Y., 357; Lynch *vs.* Clark, 1 Sandf., ch. 583.)

The act provided that "persons heretofore born or hereafter to be born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of this country, shall be deemed and are declared to be citizens of the United States."

If the father, therefore, was a citizen of the United States, his children born are now citizens by force of the statute.

So much is settled. But the father must be a citizen. If the father

was not a citizen, then his children born abroad are undoubtedly aliens.

Upon the principles laid down in the cases cited, a citizen of the United States who has expatriated himself is no longer a citizen, and consequently his children born abroad are aliens, and not entitled to be protected by the United States.

The eighth question must, upon the principles laid down in the cases I have cited, be answered in the negative.

Upon these principles a native-born citizen of the United States cannot become expatriated until he has become a citizen of another country in accordance with the naturalization laws thereof. When this has been done, he is from that time no more a citizen of the United States than a foreign-born subject.

According to the same law, laid down in my answer to the sixth question, his original character does not, therefore, revert on his return to the United States, and before he can be regarded as a citizen he must again be naturalized.

I have the honor to be, very respectfully,

WILLIAM A. RICHARDSON,
Secretary of the Treasury.

No. 499.

The Secretary of War to the President.

WAR DEPARTMENT,
Washington City, November 6, 1873.

SIR: In response to your request of August 6, addressing to me certain questions concerning the relations between the Government and persons who may claim its protection as citizens of the United States, I have the honor to reply as follows:

First question. The law-making power having declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," (15 Stat. Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

Answer. In my opinion the Executive should not refuse.

Second question. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power be regarded otherwise than an act of expatriation?

Answer. In my opinion it may not.

Third question. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country with an avowed purpose not to return?

Answer. It can.

Fourth question. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

Answer. It ought not. Such a residence abroad, prolonged and accompanied by no avowed, known, or apparent intent to return, would constitute a *prima-facie* case of expatriation which would justify the Government in withholding its protection until explained away and overcome by counter satisfactory testimony.

Fifth question. What should constitute evidence of the absence of an intent to return in such cases?

Answer. The evidence indicating an absence of an intention to return may consist of a great number of particulars, which it would be difficult to enumerate. The question is purely one of fact, to be determined by testimony, and each case must be decided on its peculiar circumstances, since it is clear that Congress, in its declaration on the subject, neither required nor contemplated any special form or mode in which the right of expatriation, so broadly recognized by it, should be exercised. Long residence abroad, accompanied by an absence of business relations with and a failure to assert and exercise the political rights of citizenship in the country left, would naturally be among the most conclusive indicia of expatriation.

Sixth question. When a naturalized citizen of the United States returns to his native country, and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself where the case is not regulated by treaty?

Answer. This, like the former, is a question of fact, to be determined on the testimony. The naturalized citizen may expatriate himself, and thut lose his newly-acquired citizenship, in the same manner as the citizen born can do. Perhaps, in his case, a smaller measure of proof as to the *animus* of his continued residence in his native country would be required than might be deemed necessary in the case of the citizen born.

Seventh question. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States, and entitled to its protection?

Answer. This question is supposed to relate to children born abroad, and who are minors at the time their parent expatriates himself. Under such circumstances, his domicile being theirs, in contemplation of law, it is believed that they would necessarily share the change wrought in his status by expatriation. In our country minors become citizens through the act of their parents in bringing them here, and their resulting residence, and there seems to be no reason why they should not equally abide the effect of his action when it results in their expatriation.

Eighth question. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

Answer. He cannot. A citizen who expatriates himself becomes, it is thought, to all intents and purposes, an alien, and, like all other aliens

or subjects of a foreign government, he can only become again a citizen of the United States by a compliance with our naturalization laws.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

To the PRESIDENT,
(Through the honorable the Secretary of State.)

No. 500.

The Secretary of the Navy to the President.

NAVY DEPARTMENT,
November 1, 1873.

To the President of the United States:

SIR: I have the honor to acknowledge the receipt, through the Secretary of State, of your letter requesting my opinion, in writing, upon certain questions therein stated concerning the relations between the Government and persons who may claim its protection as citizens of the United States, and in reply I beg to submit the following:

Some general observations are proper before examining each question in detail.

Every government may make such laws as it sees fit in regard to the expatriation of its own citizens, and may also enforce within its own jurisdiction such laws as it makes in regard to the naturalization of foreigners.

These subjects belong, within the limits here indicated, to the municipal laws of each nation.

It follows from the first proposition that, on the subject of the right of expatriation, the declaration of Congress in the act of July 27, 1868, is *law* as to our own citizens, while as to the rights of citizens of other countries, in reference to their allegiance, it is only a *declaration of opinion* as to what is the law of nature or of nations, and is binding on other nations so far only as they assent to it by treaty, or as it may, in truth, accord with the law of nations. Being *law* as to the right of our own citizens to expatriate themselves, it must, of course, be given full effect by the Executive as regards them; the only question which can arise in this application of the doctrine being the question of fact as to whether a citizen has actually expatriated himself.

But as regards the application of the principle declared in the act to persons bearing other natural relations and having original duties to other nations, the subject is much more complicated and difficult.

While the act of 1868 is declaratory of what is considered the American doctrine, it must be remembered that Congress cannot alter the law of nations; and anything contained in the act contrary thereto is not binding on the President, who is charged with the administration of our foreign relations.

If, for example, Congress should declare that the President must interfere to protect a naturalized citizen contrary to the tenor of treaties or contrary to the law of nations, the enactment would *pro tanto* be void.

Therefore the declaration of the act and the references and the conclusions which follow them must be considered subject to certain qualifications of the right of protection and interference, which grow out of the rights of other governments and are still recognized by the law of nations. In considering these it must be borne in mind that the rights of expatriation and naturalization are not strictly correlative rights. A man may have a right, by the laws of the country to which he emigrates, to be naturalized, and yet may not have a right, by the laws of his own country, to expatriate himself; and much more clear, though not more *true*, is the principle that a man may have the right of expatriation from one country without the right of naturalization in another.

As every country makes such laws on these several subjects as it sees fit, without inquiring as to the laws of other countries, it may be considered settled that the assent of a man's mother country to his change of allegiance is not regarded as necessary in the country which naturalizes him.

This is so universally the principle on which all nations act, that it may be assumed to be in conformity with international law.

After a man is naturalized in the country to which he emigrates, he is then, admittedly, entitled to all the protection, at home and abroad, (excepting only the country from which he emigrated,) which is accorded to a natural-born citizen.

As regards the country from which he emigrated, if he returns there, the question of the protection to be given by his adopted country becomes again complicated with other questions of natural rights and duties. He cannot justly claim to be discharged from obligations or penalties which he actually incurred before his emigration, unless they are discharged by lapse of time, or other intrinsic reason. This is generally conceded in all the treaties which our Government has effected on the subject. (See the treaties mostly collected in the note to Chap. I of Wharton's Conflict of Laws, pp. 1–20.)

In the simple case where a naturalized emigrant returns to his native country with the purpose of remaining there permanently and never returning to his adopted country, he is considered as having relinquished his acquired citizenship and re-assumed the duties of his natural one. In such case, of course, all obligation to protect him, on the part of his adopted country, ceases. This is also provided in most of the treaties.

(See Halleck's International Law, 692–700. Wharton's Conflict of Laws, pp. 1–20; Wheaton's International Law, by Lawrence, appendix, pp. 891, &c.)

But if he returns to the jurisdiction of his native country without returning to his natural allegiance, the question of opposing existing rights arises. The right of expatriation, it is seen, is not entirely abso-

lute; but is somewhat qualified. An emigraut, notwithstanding he becomes naturalized, may be liable to some obligations to his mother country actually incurred.

Formerly the governments of Europe, which were mostly founded on feudal principles, regarded the sovereign as having a kind of property in his subjects, or *lieges*, which bouud them to him for life. *Liegeance*, or *allegiance*, therefore, was a tie which the subject could not sunder at his pleasure. But the practice of all nations to naturalize the subjects of other nations without inquiry as to the will of their former sovereign, shows that the doctrine of the law of nations, as now accepted, really is, that a man may throw off his old allegiance and embrace a new one.

This has always been the American doctrine, and has now become a subject of treaty with Great Britain, all the German states, Denmark, and Sweden. These treaties, recently effected, dispose of many of the intricate questions which formerly arose out of the claim of perpetual allegiance put forth by foreign nations. (See these treaties; Wharton's Conflict of Laws, pp. 1–20, and Statutes United States, vols. xvi, xvii.)

By these treaties, the rule now prevailing may be expressed generally thus: Continuous residence in this couutry for five years, and naturalization, effects an entire change of citizenship and allegiance, and all obligations to the mother coontry are extinguished, except those *actually incurred before* emigration; these remain if the emigrant return to his native country; but all liability to military duty which he evaded *by* emigration is discharged. But if an emigrant return to his native country, without the intent to return to his adopted country, he is held to have renounced his naturalization. Two years, residence in the native country manifest such intent not to return.

The following references will be useful in examining the history of the controversy respecting perpetual allegiance and the right of expatriation:

Lawrence's tract on the subject, appendix to Wheaton's International Law.
Halleck's International Law, 692–700.
Wharton's Conflict of Laws, pp. 1–20
Marcy's letter to Hulseman, in Koszta's case, September 26, 1853.
Marcy's letter to Jackson, in Tousig's case, January 10, 1854.
Cass's letter to Wright, in Tousig's case, July 9, 1859.
Cushing's opinion on the right of a citizen of the United States, to expatriate himself, 1856, Attorney General's Opinion, viii, 139.
Black's opinion's, on expatriation, Attorney General's Opinions, ix, 62–356.
Grot, 1, 5, 24. Puff, 8, 11, 2. Vattel, 1, 222, p. 105. Foelix, Droit, Int. Priv., § 28.

With these preliminary remarks I make the following replies to the questions respectively:

Question 1. The law-making power having declared that "the right of expatriation is a national and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

Answer. If a citizen of the United States should expatriate himself so absolutely that he remains under no obligation of citizenship incurred before

such expatriation, then the answer is, No; the President should not refuse to give effect to the act of expatriation. But the act of expatriation must of course be established by proper proofs, on which it is unnecessary to make a prolonged discussion. Suffice it to say, that naturalization in another country is plenary proof; and in case of a naturalized citizen then resident in his native country, without any intent to return to the United States, is sufficient proof.

Question 2. May a formal renunciation of United States citizenship, and the voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

Answer. Such renunciation and submission cannot be regarded otherwise. But what will *constitute* them is a question of some uncertainty.

A formal renunciation of United States citizenship includes, I assume, a renunciation of all claims upon the Government of the United States for future protection, and places the party under the protection of the government he adopts. Our own laws do not prescribe any special form of renunciation. The proper and most effective form would be a naturalization in another country; and wherever, and by whatever means, a citizen properly assumes the status of a new citizenship, there he may be considered as having renounced the status and relinquished the rights of his old one. It is difficult to say what form can be adopted short of that which will preclude the party from afterwards demanding United States protection. How could the formal renunciation be authenticated against him?

It seems to me that until a citizen of the United States becomes a citizen of some other country he remains a citizen of the United States. If he takes initiatory and inchoate proceedings to change his citizenship he must follow them up. Within reasonable limits of time it may be presumed that he will do so. But if that be not done, the presumption fails.

Question 3. Can an election of expatriation be shown, or presumed, by an acquisition of domicile in another country, with an avowed purpose not to return?

Answer. As to naturalized citizens, if they return to their native country with an avowed purpose never to return they are to be deemed as having renounced their acquired citizenship; but in case of a native citizen, I do not think that an election of expatriation can be shown, or presumed, simply by an acquisition of domicile in another country, even with an avowed purpose not to return. Such a person, by long residence abroad, may lose all claim of the Government to protect him, but cannot be said to have changed his citizenship. A claim of protection is not of absolute right. It may be much modified by the conduct of the citizen. He may be estopped to claim protection by his own conduct without the loss of citizenship. Thus, where he plots against, or abuses and vilifies, his own Government, or plots against or attacks a friendly one, he may lose all absolute claims on his Government, and yet he may not lose his citizenship.

Question 4. Ought the Government hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

Answer. As before said, the duty of protection depends much on the conduct of the citizen abroad. If he manifests a contempt or hostility to his own Government or country, and avoids every duty of a citizen, the Government is not bound to protect such person. The Government is left to its own discretion in such cases, and must act, under its responsibility, in each particular case. A request for protection is always to be listened to with attention, and not denied to a citizen, unless such citizen, by his conduct, has forfeited clearly his claim to it. If by absence in time of war or distress he has avoided every obligation and duty which a good citizen owes to his country, he cannot demand its protection as a matter of right when he is in distress. If he has been absent on account of business or recreation, or travel, or other fair and legitimate object of pursuit, the case and the conclusion will be different. (See Vattel, Book I, sec. 220, p. 103.)

Question 5. What should constitute evidence of the absence of an intent to return, in such cases?

Answer. The evidence of want of intent to return depends on so many circumstances that it is difficult to lay down a definite rule as to what constitutes such evidence. If the citizen be a naturalized citizen, slighter and less evidence will be required than if he is a native; and if residing in his native country, two years' residence there has been deemed sufficient evidence of the abandonment, by a naturalized citizen, of his adopted country, and intent not to return to it. But no mere length of residence abroad, it seems to me, is sufficient, standing alone, to raise, in the case of a native citizen, such a presumption. Other circumstances are required, such as disposing of property at home, and purchase of property abroad, and having all his interests centered in his foreign abode.

Question 6. When a naturalized citizen of the United States returns to his native country and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?

Answer. A naturalized citizen returning to reside in his native country will be presumed, after two years' residence, not to intend to return to his adopted country. But this would be presumption only from mere residence and lapse of time. Circumstances, actions, and even declarations might vary it. I name two years because that is the period named in several treaties for that purpose.

Question 7. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?

Answer. Children *sub potestate parentis* follow the condition of the father; or, if no father, of the mother. If of full age, and emancipated, they are subject to the same rules as any adult person.

Question 8. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

Answer. A citizen of the United States who has renounced his citizenship and become naturalized abroad, by returning to his own country and residing there without intent to return to his adopted country, will be regarded as having renounced his adopted citizenship; but he will not be again a citizen of the United States without naturalization or the force of some special law on the subject. (See the naturalization treaties before referred to, which are based on good sense, and on reason.)

It should be added, although it does not come within the direct scope of the questions submitted, that the right of protection is not confined to citizens, but extends to denizens and those having their domicile in the United States. All persons, citizens or not, who make the United States their home, whose domicile is here, and who claim the protection of the Government, will obtain it if the claim be made in good faith and the conduct of the party has not been such as to forfeit the claim.

This was the case of Martin Koszta, who had only declared his intention to become a citizen, and who resided in the United States, but was temporarily absent in Turkey, innocently employed.

All of which is respectfully submitted.

Very respectfully, your obedient servant,

GEO. M. ROBESON,
Secretary of the Navy.

No. 501.

The Postmaster-General to the President.

POST-OFFICE DEPARTMENT,
Washington, D. C., November 17, 1873.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th August, asking the opinion, in writing, of the principal officer in each of the Executive Departments upon certain questions, therewith submitted, relating to the expatriation of citizens of the United States, and the relations between the Government and expatriated persons who may claim its protection by virtue of restored citizenship.

After giving the subject such study and deliberation as its importance demanded, I cannot find any ground to differ from the views of the Attorney-General of the United States, given in his well-considered and very able opinion in answer to the same questions, also submitted to him.

The conflict of opinion heretofore expressed by eminent statesmen and jurists upon some of the points raised by the questions; the tide of immigration flowing to, and the facilities of travel from, this country; the prolonged and sometimes permanent residence of our citizens in foreign

countries—all induce me to unite earnestly with the Attorney-General in the recommendation that some positive legislation be invoked to put at rest, so far as legislation can do so, these delicate international questions, which may at any time involve us in serious complications with foreign powers.

I am, very respectfully, your obedient servant,

JNO. A. J. CRESWELL,
Postmaster-General.

His Excellency U. S. GRANT,
President of the United States.

No. 502.

The Attorney-General to the President.

DEPARTMENT OF JUSTICE,
August 20, 1873.

SIR: I have the honor to acknowledge the receipt of your communication of the 6th instant, submitting for my official opinion certain questions hereinafter stated, to which I respectfully make answer as follows:

Question I. The law-making power having declared that the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness, (15 U. S. Stat., p. 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

Answer. My opinion is that the affirmation by Congress that the right of expatriation is "a natural and inherent right of all people," includes citizens of the United States as well as others, and the executive should give to it that comprehensive effect.

Question II. May a formal renunciation of United States citizenship, and a voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

Answer. Congress has made no provision for the formal renunciation of citizenship by a citizen of the United States while he remains in this country; but if such citizen emigrates to a foreign country, and there, in the mode provided by its laws, or in any other solemn or public manner, renounces his United States citizenship, and makes a voluntary submission to its authorities with a *bona fide* intent of becoming a citizen or subject there, I think that the Government of the United States should not regard this proceedure otherwise than as an act of expatriation.

Question III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return?

Answer. Residence in a foreign country and an intent not to return are essential elements of expatriation; but to show complete expatriation as the law now stands, it is necessary to show something more than these. Attorney-General Black says (IX Opinions, p. 359) that expat-

riation includes not only emigration out of one's native country, but naturalization in the country adopted as a future residence. My opinion, however, is that, in addition to domicile and an intent to remain, such expressions or acts as amount to a renunciation of United States citizenship and a willingness to submit to or adopt the obligations of the country in which the person resides, such as accepting public employment, engaging in a military service, &c., may be treated by this Government as expatriation, without actual naturalization. Naturalization is, without doubt, the highest but not the only evidence of expatriation.

Question IV. Ought the Government to hold itself bound to extend its protection, and exert its military and naval power for such protection, in favor of persons who have left its territories, and who reside abroad, without an apparent intent to return to them, and who do not contribute to its support?

Answer. Persons born in the United States, who, having left them, reside abroad with no apparent intention of returning, and who do not contribute to their support, do not necessarily discharge the United States Government from its obligation to interpose for their protection in proper cases. Foreign domicile, which is substantially described in this inquiry, is not the equivalent of expatriation. When a citizen of the United States becomes domiciled in a foreign country he becomes, as a general rule, subject to its laws and its authorities like one of its citizens; but if, by his acts or declarations, he continues to assert his United States citizenship, and takes no oaths, or public or official obligations inconsistent therewith, it is the duty of the Government of the United States, though he may have at the time no real or apparent intent to return to them, to protect him against special acts of wrong or injustice by the Government of the country in which he resides, and from the imposition upon him by that government of duties which are exclusively due from its own citizens or subjects, or which may be inconsistent with his allegiance to the United States.

Question V. What should constitute evidence of the absence of an intent to return in such cases?

Answer. When a citizen of the United States goes abroad without intending to return, he takes one indispensable step toward expatriation; but to effect a complete annihilation of all duties and obligations between the government of his native country and himself, which extradition implies, it is necessary that he should become a resident in some foreign country with an intent to remain there, superadded to which there must be acts in the direction of becoming a citizen or subject of such foreign country, amounting at least to a renunciation of United States citizenship. Absence of an intent to return to one's native country, or to speak, perhaps, with more accuracy in considering a question of expatriation, an intent to remain in a foreign country, may be evidenced in various ways and by a great variety of circumstances, and though it might not be difficult to determine from the facts in a specific case as to the intent of a party changing his domicile, it is impossible to lay down any general rule upon the subject by which all

cases can be decided. Intent is the great criterion by which the character of domicile is determined. When a person avows his purpose to change his residence and acts accordingly, his declarations upon the subject are generally received as a satisfactory evidence of his intent; but in the absence of such evidence the sale of his property and the settling up of his business before emigration, the removal of his family, if he has one, arrangements for a continuing place of abode, the acquisition of property after removal, the formation of durable business relations, and the lapse of a long period under such circumstances are among the leading considerations from which the intent to make a permanent change of domicile is inferred.

Question VI. When a naturalized citizen of the United States returns to his native country, and resides there for a series of years with no apparent purpose of returning, shall he be deemed to have expatriated himself where the case is not regulated by treaty?

Answer. Conflicting views have been advanced upon this question by distinguished lawyers and statesmen of this country; but I know of no principle upon which it can be held that, with respect to protection in foreign countries, the rights of a naturalized are different from those of a native-born citizen. Domicile in his native country without an intent to return to the United States, by a naturalized citizen, would not of themselves, so long as he maintains his claim and distinctiveness as such naturalized citizen, deprive him of his right of protection in proper cases by the Government of the United States. But less evidence would perhaps be requisite to show that a person residing in his native country had thrown off a foreign citizenship acquired by naturalization, or, in other words, had expatriated himself from his adopted country, than to show that a person born in the United States, but residing elsewhere, had expatriated himself from his native country. Naturalization effected in the United States without an intent to reside permanently therein, but with a view of residing in another country, and using such naturalization to evade duties and responsibilities that would otherwise attach to the naturalized person, ought to be treated by the Government of the United States as fraudulent, and as imposing upon it no obligation to protect such person; and as to this the Executive must judge from all the circumstances of the case. Section 2 of the act of July 27, 1867, *(supra,)* as to protection in foreign countries, puts naturalized and native-born citizens upon the same ground.

Question VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States, and entitled to its protection?

Answer. Section 1 of the act of February 10, 1855, (10 U. S. Stat., p. 604,) provides that "persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were, or shall be at the time of their birth, citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however*, that the rights of citizenship

shall not descend to persons whose fathers never resided in the United States;" from which, as well as from other considerations, it is evident that children born abroad of persons once citizens of the United States, but who have become citizens or subjects of a foreign power, are not citizens of the United States, or, as such, entitled to their protection.

Question VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?

Answer. Persons born in the United States who have, according to the laws of a foreign country, become subjects or citizens thereof, must be regarded as aliens; and section 1 of the act of April 14, 1802, (2 U. S. Stat., p. 153,) declares that an alien may be admitted to become a citizen of the United States as provided in said act, and not otherwise. Actual naturalization abroad would seem to be necessary to make a person born in the United States an alien.

Section 1 of the fourteenth amendment to the Constitution declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." But the word "jurisdiction" must be understood to mean absolute or complete jurisdiction, such as the United States had over its citizens before the adoption of this amendment. Aliens, among whom are persons born here and naturalized abroad, dwelling or being in this country, are subject to the jurisdiction of the United States only to a limited extent. Political and military rights and duties do not pertain to them.

I have made the foregoing answers as specific as I can to what are abstract propositions; but I beg to add, generally, that, in the absence of treaties and legislation by Congress touching the subjects involved in said questions, the rules of law relating thereto are to be drawn from writers upon international and public law, who do not always agree. and therefore it will be difficult for the Government to act upon any such rules without a chance of controversy.

Legislation is needed to declare by what acts United States citizenship is lost. According to the French code, not only naturalization in a foreign country, but a fixed residence there without the intention of returning, destroys the quality of a Frenchman; and regulations to the effect that a subject by acts other than naturalization in a foreign country may expatriate himself have been adopted by Russia, Austria, Italy, and other countries of Europe. I can see no good reason why Congress may not put an end to controversy upon the subject by declaring that a citizen of the United States who emigrates to a foreign country with the avowed purpose of remaining there, or who resides abroad for a definite period without an avowed purpose of returning to the United States, shall be considered as thereby expatriating himself or losing the right to call upon the Government of the United States for protection during such foreign residence. Several treaties have been

made with European powers to the effect that when a naturalized citizen renews his residence in his native country with intent to remain, he shall be held to have renounced his naturalization; and something like this, it seems to me, might with great propriety be incorporated into the laws of this country, to be applied as well to our citizens who, having been naturalized abroad, return to reside in the United States, as to those who, naturalized here, return to reside in their native country.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

The PRESIDENT.

No. 503.

The Secretary of the Interior to the President.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 30, 1873.

SIR: I have the honor to acknowledge the receipt of your communication of the 6th of August last, which requests me to answer certain interrogatories relative to the rights and duties of citizens of the United States and the manner in which, under our institutions, citizenship may be acquired and lost.

This communication came to hand during my absence from the city, which was protracted longer than I anticipated by providential circumstances over which I had no control. Since my return I have considered, as fully as time and official engagements would permit, the important subject embraced in your interrogatories, and now have the honor to express in writing my opinion upon the questions referred to, which are as follows:

"I. The law-making power having declared that 'the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness,' (15 Stat. at Large, 223,) should the Executive refuse to give effect to an act of expatriation of a citizen of the United States?

"II. May a formal renunciation of United States citizenship, and voluntary submission to the sovereignty of another power, be regarded otherwise than as an act of expatriation?

"III. Can an election of expatriation be shown or presumed by an acquisition of domicile in another country, with an avowed purpose not to return?

"IV. Ought the Government to hold itself bound to extend its protection, and consequently exert its military and naval power for such protection, in favor of persons who have left its territories and who reside abroad without an apparent intent to return to them, and who do not contribute to its support?

"V. What should constitute evidence of the absence of an intent to return in such cases?

"VI. When a naturalized citizen of the United States returns to his native country, and resides there for a series of years, with no apparent purpose of returning, shall he be deemed to have expatriated himself, where the case is not regulated by treaty?

"VII. Are the children born abroad of a person who has been a citizen of the United States, but who has become a subject or citizen of another power, or who has expatriated himself, citizens of the United States and entitled to its protection?

"VIII. Can a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, become again a citizen of the United States in any other way than in the manner provided by general laws?"

These questions open an interesting field of inquiry, and render it proper to consider what is citizenship of the United States, where is the power which can confer or take it away, and how may it be acquired or lost

It is not easy to define citizenship, and but few have done it, although the general idea of what is included in the term citizen is pretty well understood. All agree that it includes males and females and minors. It includes all those who owe allegiance, fidelity, and support to the Government, and who, in return for the same, are entitled to be protected and defended by it. "Allegiance," says Blackstone, "is the tie or ligament that binds every subject to be true and faithful to his sovereign *in return* for protection which is afforded him." "The duty of allegiance," says Attorney-General Bates, "and the right to protection are correlative obligations, *the one the price of the other*, and they constitute the bond between the individual and his country." "If the body of society," says Vattel, "or he who represents it, (the government,) absolutely fail to discharge their obligations toward the citizen, the latter may withdraw himself, *for* if one of the contracting parties does not observe his engagements the other is no longer bound to fulfill his, *as the contract is reciprocal between society and its members.*"

I would define a citizen of the United States to be a native-born or naturalized person, of either sex, who owes allegiance to and is entitled to protection from the United States, or a person who is made a citizen by treaty stipulations or statutory or constitutional law.

The power of conferring or taking away citizenship rests in Congress. The Constitution has conferred upon it the power "to establish a uniform rule of naturalization." (Article 4, section 8.) It is impossible to execute this power and make citizenship uniform unless the United States have exclusive control over the subject; and hence it must be admitted that all the powers which the States previously had were surrendered and vested in the nation. This seems so palpably just and necessary that it requires no argument or authority in its support; but, as it may be denied, I venture to refer to the following authorities:

In 2 Kent Com., 30, it is said, "The question of citizenship is one of national, and not of individual (or State) sovereignty."

Judge McLean, in the Dred Scott case, 19 How., 533, declares, "that a State may authorize a foreigner to hold real estate, but it has no power to naturalize foreigners and give them the rights of citizens. Such a right is opposed to the acts of Congress and subversive of the Federal powers."

Attorney-General Bates, (10th Opinions, 382,) says: "Every person who is a citizen of the United States, whether by birth or naturalization, holds his great franchise by the laws of the United States, and above the control of any particular State."

It has frequently been held that no State can confer the elective franchise upon one who is not a citizen of the United States. Citizenship is national. It is the nation, and the nation only, that can make and unmake citizens. If the elective franchise can be conferred by a State upon persons not citizens of the United States, it would enable the State to subvert and overthrow the institutions and form of the National Government. Upon this point I will refer to the opinions of some of our ablest jurists and statesmen.

Judge Curtis, in 19 How., 581, before quoted, says: "The enjoyment of the elective franchise is not essential to citizenship. It is one of the chiefest attributes of citizenship under the American Constitution; and the just and constitutional possession of this right is decisive evidence of national citizenship."

Judge Story illustrates this point with admirable power. He says: "If aliens might be permitted indiscriminately to enjoy all the rights of citizens at the will of a single State, the Union itself might be endangered by the influx of foreigners, hostile to its institutions, ignorant of its forms, and incapable of a due estimation of its privileges." (1 Story on Const., 1103.)

In Wheaton, page 910, Mr. Lawrence says: "If the States can admit to the elective franchise those who are not citizens, thereby neutralizing the votes of citizens, not only the federal power of the nation *becomes a nullity*, but a majority of actual citizens, by the aid of aliens, may control the government of the States, and through the States the government of the Union."

Mr. Calhoun (Wheaton, 905) has stated the point very clearly, and, without intending to indorse his opinions on all other subjects, I heartily approve of what he has said on this. I quote: "Whatever difference of opinion there may be as to what other rights appertain to a citizen, all must agree that he has the right to *petition*, and also to claim the *protection* of the Government. These belong to him as a member of the body-politic, and the possession of them is what separates citizens of the lowest condition from aliens and slaves. To suppose that a State can make an alien a citizen, or confer on him the right of voting, would involve the absurdity of giving him the direct and immediate control over the action of the General Government, from which he can claim no protection, and to which he has no right to present a petition."

"Now, admit that a State may confer the right of voting on aliens, and it follows that we might have among our constituents persons who have not the right to claim the protection of the Government nor present a petition to it. But a still greater difficulty remains. Suppose a war should be declared between the United States and the country to which the aliens belong. They, as alien enemies, would be liable to be seized under the laws of Congress, and to have their goods confiscated, and themselves imprisoned or sent out of the country."

The power being with Congress, as I have attempted to show above, to regulate, control, confer, and take away citizenship, has it acted or

done anything to indicate its will upon this subject? It has from the origin of the Government provided by law for the naturalization of foreigners, and thus conferring citizenship upon them. It has required of them to renounce all allegiance to any foreign prince or potentate. The fact that such renunciation is required by Congress is satisfactory evidence to my mind that Congress regarded the foreigner as having the lawful right to renounce such allegiance, and thereby to *expatriate himself.* After practically recognizing this doctrine for three-fourths of a century, Congress expressly declared it by the act of July 27, 1868, (15 Stat., 224.) It enacted—

"That any declaration, instruction, or opinion, order or decision of any officers of this Government which *denies, restricts, impairs, or questions* the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government.

"That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this Government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances."

It would be difficult to frame a more stringent legislative declaration of the right of expatriation. If a foreigner has the right to renounce allegiance to his government and assume that of our own, then, to be consistent, it must be conceded, *e converso*, that a citizen of our Government has the right to throw off his allegiance and transfer it to that of another government, provided it be done *bona fide.* I think this may be done. In my opinion, man has the natural right to relinquish the society in which he was born and seek his home and happiness elsewhere. In other words, he has the *natural* and *inherent right* to *expatriate himself.* How this may be done has not been defined by Federal legislation. The method is left to the individual. It must be done in good faith, with an actual change of residence, without the purpose to evade responsibility for criminal acts, or to escape duties already imposed, and, in general, in time of peace. When thus done, allegiance is ended, and the right of protection and defense gone.

Attorney-General Black, in speaking of a native or naturalized citizen, says:

"In my opinion, if he emigrates, carries his family and effects along with him, manifests a plain intention not to return, takes his permanent residence abroad, and assumes the obligation of a subject of a foreign government, this would imply a dissolution of his previous relations with the United States; and I do not think we could or would afterward claim from him any of the duties of a citizen." (9 Op. Atty.-Gen., 63.)

Believing, as I do, that the citizen has the right to expatriate himself, I must answer your first interrogatory that, in my opinion, the Executive should not refuse to give effect to an act of expatriation of a citizen of the United States.

I answer your second interrogatory, that a formal renunciation of

United States citizenship and a voluntary submission to the sovereignty of another power should, in my opinion, be regarded as an act of expatriation.

I answer your third interrogatory that, in my opinion, an election of expatriation can be shown by an acquisition of domicile in another country with an *avowed* purpose not to return.

I answer your fourth interrogatory that, in my opinion, the Government is not bound to extend its protection or to exert its military or naval power for the protection of persons who have left its territories and reside abroad without an apparent intent of returning and who do not contribute to its support.

The duty of protection is correlative with that of support, and the voluntary withdrawal of support by the citizen releases the Government from its duty to defend and protect such citizen.

I answer your fifth interrogatory, that it is very difficult, if not impossible, to lay down any general rule that will apply to all cases. Each case must stand upon its own circumstances. They must be such as to fairly satisfy a reasonable man that the citizen has gone abroad with intent to remain and without intent to return. The best evidence of this would be the declaration of the party, accompanied by an actual removal. But declarations are not absolutely essential. Acts may be entirely satisfactory. For example, if a citizen who is the head of a family and the owner of property in this country should dispose of all his property here, take his family with him and go to a foreign state, and there purchase a home, or such other property as the owner ordinarily looks after in person, and should remain with his family some considerable time, without any avowed purpose of return, I think that would be sufficient evidence that he had expatriated himself.

I answer your sixth interrogatory that, in my opinion, a naturalized citizen, who has returned to his native country and resided there for a series of years, without any apparent purpose of returning to this, and whose case is not regulated by treaty, should be deemed to have expatriated himself.

I answer your seventh interrogatory that, in my opinion, children born abroad of parents who have been citizens of the United States, but have become subjects or citizens of another power, or who have expatriated themselves, are not citizens of the United States, and are not entitled to its protection.

I answer your eighth and last interrogatory that, in my opinion, a person who has formally renounced his allegiance to the United States, and assumed the obligations of a citizen or subject of another power, cannot become again a citizen of the United States in any other way than that provided by general laws. If a person may rightfully expatriate himself and become the subject of another power, then he is no longer a citizen of the United States, but a citizen of such other power, and it follows logically that, if he would again become a citizen of the United States, he must pursue the method pointed out by law, which

enables a person who is not a citizen of the United States to become one. This is the dictate of common sense, and should be, and is, the law.

Very respectfully, your obedient servant,

C. DELANO,
Secretary of the Interior.

The PRESIDENT.

No. 504.

Mr. Fish to Mr. Marsh, (same to Mr. Washburne and to Mr. Bancroft.)

No. 395.] DEPARTMENT OF STATE,
Washington, August 11, 1873.

number of American citizens resident or temporarily sojourning in Italy.

SIR: It is desirable to know with a reasonable approach to accuracy the

If practicable you will ascertain—

I. The number of Americans whose residence in Italy has been of long continuance, or seems to be indefinite in its intended duration.

II. The number sojourning or traveling and temporarily abiding in the country, and you will consider and report whether the number to be stated in your return may be regarded as above or below the average number of such Americans for a series of years.

III. The number of children born in Italy (annually) of fathers who claim to be American citizens.

IV. The number of Americans who may have been naturalized as Italians, or otherwise *formally* disavowed American citizenship.

I wish also to know whether any record or registration is made, or any notice is generally filed, either in the legation, or at the consulates of the United States in Italy, of the birth of children born in Italy of fathers who claim to be American citizens.

It is understood that some American citizens have registered the births of children born to them out of the United States, either as those of subjects of the country in which they were born, or so as to entitle them to the option of claiming citizenship in that country. It is reported that instances of this kind were quite frequent during the rebellion in this country. You will endeavor to ascertain whether this be so, and, if it be, whether you can obtain a list of those who were thus registered and the names of the parents or others who registered them.

I desire the information asked, especially that under the four enumerated heads, with as little delay as possible.

I am, sir, your obedient servant,

HAMILTON FISH.

GEORGE P. MARSH, Esq.,
&c., &c., &c.

[Same *mutatis mutandis* to the ministers of the United States at Berlin and Paris.]

No. 505.

Mr. Bancroft to Mr. Fish.

No. 518.] AMERICAN LEGATION,
Berlin, September 8, 1873. (Received September 26.)

SIR: The main question on which you inquire in your instruction No. 599 has engaged my attention ever since I have resided in Germany as minister.

When measures were adopted for taking the census of the United German Empire, I requested that the officers employed in taking it might be instructed to make a special count of the Americans in Germany. The German government acceded to my request, and it appears from the returns that on the 1st day of December, 1871, the Americans present in Germany numbered 10,672. This census includes the American-born not less than the naturalized Germans; and travelers and sojourners as well as residents. But it was taken at a period of the year when the number of transient travelers is at a minimum.

As a help to a conjecture on the question how these are to be distributed as residents or sojourners, (and nothing more than a conjecture is possible,) I have made fresh inquiries at Bremen and at Hamburg, on the number of passengers which the two great lines of steamers annually bring to those ports. In the year from July 1, 1872, to July 1, 1873, the regular Hamburg steamers brought 9,594 passengers to Europe, of whom 9,000 may have been destined for Germany. Extra Hamburg steamers brought about 1,000 passengers more, so that we may set down the arrivals in Germany by that line of steamers at 10,000 a year, and of these 7,500 may be German-Americans. During the same period of twelve months the passengers in the Bremen line amounted to 3,910 first-class passengers and 7,216 steerage passengers; in all, 11,126. Of these, I think 10,000 were American citizens, of whom perhaps 1,000 remain in Germany or some part of Europe for more than one season. These statistical accounts obtained from Hamburg and Bremen in my judgment go to show that the census return for December 1, 1871, fell short of rather than exceeded the true number of Americans then present in the German Empire. Your instruction to me is, if possible, to *ascertain* the numbers you inquire after. To that I must reply that to *ascertain* is impossible, but relying on the candor of the Department, and repeating that estimates, if made at all, must be made on mixed and imperfect data, I venture to give to your questions conjectural answers.

I. Of Americans whose residence in Germany has been of long continuance, or seems to be indefinite in its intended duration, I estimate the number at 10,000, and that number rather on the increase.

II. Of Americans annually arriving from the United States in the German Empire, I estimate the number at about 15,000, of whom about 13,000 return in the same season, leaving, perhaps, about 1,500 as sojourning or temporarily abiding in the country, and about 500 to be added to the class of those whose residence seems to be indefinite, thus doing a little more than making good the losses by death and otherwise in the resident class.

III. It is not possible to state the number of children born in Germany of fathers who claim to be American citizens. But as the class of resident Americans is composed mainly of persons advanced in life, or of families of whom the heads are advanced in life, the number of children born in Germany of American parents must be proportionally very much less than the number born among the same number of Germans.

IV. There is no record kept at the legation of children born of American parents in the German Empire. The only instances of a registry that have occurred in my time are those of children born in families of this legation. So far as I know, no such record is kept at any of the consulates. The Germans, however, are very particular in registering all births; but as these registers are kept by the clergy, so that a separate one is kept for each parish in the Empire, it would not be possible for the legation to ascertain how many have been registered as American citizens. In special cases the inquiry would be easy, for a claimant of

American citizenship of this class might be called upon to produce an authenticated copy of his baptism.

I annex a translation in detail of the reports made to me from the census bureau of the Americans present in the German Empire on the first day of December, 1871, and copies of letters from the consulates at Hamburg and Bremen.

I remain, &c.

GEORGE BANCROFT.

View of the Americans counted as present on the 1st December, 1871, in the states of the German Empire, Prussia and the principalities of Pyrmont and Waldeck excepted.

States of the German Empire.	Male.	Female.	Total.
Lauenburg	.....	1	1
Bavaria	757	689	1,446
Saxony	595	652	1,247
Würtemberg	624	668	1,292
Baden	450	381	831
Hesse	292	241	533
Mecklenburg-Schwerin	27	16	43
Saxe-Weimar	56	35	91
Mecklenburg-Strelitz	11	7	18
Oldenburg	56	41	97
Brunewick	48	28	76
Saxe-Meiningen	27	17	44
Saxe-Alteuburg	12	10	22
Saxe-Coburg Gotha	50	36	86
Anhalt	9	6	15
Schwarzburg-Rudolstadt	8	9	17
Schwarzburg-Sondershaueen	10	8	18
Reuse, elder branch	1	.....	1
Reuss, younger branch	5	5	10
Schaumburg-Lippe	1	1	2
Lippe	22	11	33
Lübeck	8	14	22
Bremen	246	233	479
Hamburg	333	235	568
Alsace and Lorraine	56	33	89
In the German Empire, exclusive of Prussia, Waldeck, and Pyrmont	3,704	3,377	7,081
In the Kingdom of Prussia	2,016	1,567	3,583
In Waldeck and Pyrmont	6	2	8
Total	5,726	4,946	10,672

View of the Americans counted as present on the 1st December, 1871, in the Kingdom of Prussia and the principalities Waldeck and Pyrmont.

	Districts and provinces.	Number of Americans.		
		Male.	Female.	Total.
1	District of Königsberg	7	1	8
2	District of Gumbinnen	1	1	2
3	District of Dantsic	4	5	9
4	District of Marienwerder	7	3	10
I	Province of Prussia	19	10	29
5	District of Berlin	346	187	533
6	District of Potsdam	21	13	34
7	District of Frankfort	16	4	20
II	Province of Brandenburg	383	204	587
8	District of Stettin	26	16	42
9	District of Coslin	9	6	15
10	District of Stralsund	3	3	6
III	Province of Pomerania	38	25	63
11	District of Posen	21	13	34
12	District of Bromberg	16	5	21
IV	Province of Posen	37	18	55

View of the Americans counted as present on the 1st December, 1871, in the Kingdom of Prussia and the principalities Waldeck and Pyrmont—Continued.

	Districts and provinces.	Number of Americans.		
		Male.	Female.	Total.
13	District of Breslau	26	22	48
14	District of Liegnitz	25	33	58
15	District of Oppeln	7	3	10
V	Province of Silesia	58	58	116
16	District of Magdeburg	12	10	22
17	District of Merseburg	17	14	31
18	District of Erfurt	13	12	25
VI	Province of Saxony	42	36	78
VII	Province of Schleswig-Holstein	92	56	148
19	District of Hanover	122	113	235
20	District of Hildesheim	75	53	128
21	District of Lüneburg	14	7	21
22	District of Stade	87	64	151
23	District of Osnabrück	41	21	62
24	District of Aurich	10	9	19
VIII	Province of Hanover	349	267	616
25	District of Munster	17	7	24
26	District of Minden	54	30	84
27	District of Arnsberg	17	13	30
IX	Province of Westphalia	88	50	138
28	District of Cassel	147	116	263
29	District of Wiesbaden	543	538	1,081
X	Province of Hesse-Nassau	690	654	1,344
30	District of Coblentz	44	36	80
31	District of Dusseldorf	99	62	161
32	District of Cologne	48	66	104
33	District of Treves	15	16	31
34	District of Aix-la-Chapelle	12	18	30
XI	Rhine Province	218	188	406
XII	Hohenzollern	2	1	3
	In the Kingdom of Prussia	2,016	1,567	3,583
	Principalities Waldeck and Pyrmont	6	2	8

Mr. Robinson to Mr. Bancroft.

HAMBURG, *September* 3, 1873.

DEAR SIR: I am in receipt of your favor of the 1st, and fear you will find it a difficult task to ascertain the number of German-Americans who annually resort to Germany.

The twenty-six regular Hamburg steamers which arrived here from July 1, 1872, to July 1, 1873, brought 9,594 passengers to Europe. Although one-fifth of these landed at Cherbourg or Plymouth, they were mostly bound for Southern Germany, so that I can safely assume that 9,000 of them came to Germany. By the extra steamers which came about 1,000 passengers were brought. This would make 10,000 persons, of whom, knowing what material they are generally composed of, I can say that 7,500 were German-American citizens, their wives, children, &c. How many of these came to remain it is impossible to state, but I should say certainly not more than 500 or 1,000, leaving 6,000 to 6,500 as temporary visitors during the year.

I am, &c.,

ED. ROBINSON,
United States Consul.

Mr. Gruner to Mr. Bancroft.

BREMEN, *September* 3, 1873.

SIR: I have the honor to acknowledge the receipt of your communication dated September 1. In answer I beg to state that it is nearly an impossibility to ascertain the fact inquired for, there being no data to refer to. The passengers arriving here from the United States do not state their nationalities, but merely the State or city they came from, and the only criterion to go by is their name, which, of course, is only guess-work, as they may just as well be American-born as naturalized. Taking, therefore, into consideration that the passengers arrived here from the United States during the year 1872 amount to 3,910 first-class and 7,216 steerage, (the same proportion about in 1873 up to date,) it can be safely calculated that nearly from two-thirds to three-fourths of the former class, and at least five-sixths to seven-eighths of the latter, bear German names. From this statement, however, have to be deducted the commercial agents, who yearly make several trips to and fro; the quantity of those who remain in Germany permanently it is impossible to state, as all of them pass through this city for the interior. I judge, however, there are but few families, although it is said that lately more of the working-class of people have returned on account of the higher wages and cheaper living.

Trusting these explanations will meet your approbation,

I remain, &c.,

J. GRUNER,
Acting U. S. Consul.

No. 506.

Mr. Marsh to Mr. Fish.

No. 478.] LEGATION OF THE UNITED STATES,

Rome, October 10, 1873. (Received November 3.)

SIR: Referring to your instruction No. 395, dated 11th of August, 1873, requiring information respecting the number of American citizens resident or temporarily sojourning in Italy, and to Mr. Wurts's dispatch on the same subject, No. 472, dated September 7, 1873, I regret to say that, though the legation has resorted to all the sources of inquiry readily accessible to us, we have failed to obtain as full and as exact details as we hoped and expected.

Returns have been received from all the consuls of the United States in Italy, except those at Genoa and Carrara, who have not yet replied to Mr. Wurts's circular; but on several of the points suggested the records of the consulates contain but scanty information, and, as will be seen from the note of the Italian minister of foreign affairs, dated September 27, a copy and translation of which, marked 1, are hereto annexed, nothing is at present to be gathered from the returns of the last census or from any of the public offices of this kingdom. Your *first* inquiry is as to the number of Americans whose residence in Italy has been of long continuance, or seems to be indefinite in its intended duration.

On this point the consulates report as follows:

At Ancona, the American residents are none.

At Brindisi, none.

At Florence, about 60, whose residence is upward of ten years, and of half of these the residence may be considered as indefinite in intended duration.

At Leghorn, two families, consisting of ten persons.

At Messina, native-born, 1; naturalized Sicilians, 18, with residence dating from various periods since 1844. Their families are apparently not embraced in the enumeration.

At Naples, 7, with their families, amounting in all to 16.

At Palermo, none.

At Rome, 110.

At Spezia, none.

At Venice, a family of 7, naturalized.

garded as above or below the annual average for a series of years.

II. Your *second* inquiry respects the number sojourning and temporarily abiding in the country, and asks whether such number is to be re-

The consuls report:

At Ancona, none.

At Brindisi, many Americans pass through the town, on their way to or from the East, but their stay does not exceed one week.

NOTE.—The steamers from Alexandria are weekly, and passengers often fail by a few hours to reach Brindisi in time, and are delayed until next trip.

At Florence, of *winter residents* about 200, the number having increased since the removal of the seat of government to Rome; of travelers spending one or two weeks in town, from October to June, an average per month of 300.

At Leghorn, in the summer, on the average about 20.

NOTE.—These I believe are chiefly persons residing in other Italian towns, and repairing to Leghorn for sea-bathing.

At Messina, none excepting passing travelers, who may remain two or three days only.

At Naples many temporary visitors, but number not stated. Residents of long duration, 21.

At Palermo, a family of three persons. Average annual number, about three or four families of twenty persons.

At Rome, students in American Catholic College, 30, and a few in the Propaganda. Number of temporary visitors not given, but supposed to be much smaller than formerly.

NOTE.—Upon personal inquiry of bankers and other well-informed persons, I learn that the probable average number of American travelers at Rome is from three to four thousand. It appears to have been somewhat greater for a year or two before the occupation of the city by the Italians, but the difference is not very sensible. The majority of American visitors to Rome remain from one to four weeks, and two or three hundred pass the whole season from November to April at the city.

At Spezia a few, number not stated, in summer.

NOTE.—These, with the exception of naval officers, are, I believe, chiefly persons residing in other Italian towns, and repairing to Spezia for sea-bathing, as at Leghorn.

At Venice 48, which is much below the ordinary average, on acco of the prevalence of cholera.

III. The third query is as to the number of children born in Italy of fathers claiming to be American citizens.

At Ancona are reported none.

At Brindisi, none.

At Florence, annually about 2.

At Leghorn, none.

At Messina, since 1848, 20, all apparently of naturalized parents who have returned to reside in their native country.

At Naples, last two years registered 2; number not registered is not given.

At Palermo, none.

At Rome none registered, and no means of knowing actual number.
At Spezia, none.
At Venice in 1872, 1.

IV. The fourth inquiry refers to the number of Americans who may have been naturalized as Italians, or otherwise formally disavowed American citizenship.

No cases of this sort are reported by the consuls, but it is within my personal knowledge that in the year 1871, Guadagui Torelli, an Italian, naturalized as an American citizen and residing at Florence, formally renounced his American citizenship by a proceeding before a public judicature in conformity with the laws of Italy, and the consul at Messina reports a case of renunciation of American citizenship by a native of Messina whose naturalization was discovered to be fraudulent.

You inquire further whether any record or registration is made, or any notice filed, either at the legation or at the consulates of the United States in Italy, of the birth of children of fathers claiming to be American citizens.

It appears from the consular returns that at many of the consulates no records of the births of such children are kept. Since 1859 one such birth has been registered at the consulate in Florence; within the last twenty years four at that of Leghorn. A register is kept at Messina, and the number since 1848, as appears under III, is 20. None registered during the past year at Naples. At the consulate at Rome there is a book for the purpose of recording such births, but few parents cause the births of children to be registered. At Spezzia births of children of naval officers are registered. At the consulate at Venice a book for that purpose is kept.

I have no means for ascertaining the number of Italians and other foreigners naturalized in the United States and now residing in Italy, but though it is doubtless considerably smaller than during and soon after the rebellion, I think it must still amount to several hundred. These persons very frequently make no claim to American nationality, unless in cases of conscription, and in these, I have reason to believe, they often succeed in obtaining from the local authorities an exemption without an appeal to the national government. In fact, except in the cases where they return to their own native residence, and are recognized by old acquaintances, they are not usually called upon to discharge civil or military obligations, and, as many of them have no visible property and no very stable residence, they escape taxation. I have known one case, and heard of others, of Italians who had never been in the United States, but had resided many years in Italy as American citizens upon no other evidence of nationality than passports issued to them by the United States consul at Rome on the surrender of that city to the French army in the invasion of 1849.

In many cases where I have been applied to by naturalized Italians for recognition as American citizens, I have found that an interval of several years elapsed between the first application to the courts and the granting of the certificate, the intermediate time having been spent in other countries or in a wandering life in the United States, and in these cases the certificate has been granted only on the eve of their departure for Europe. In most cases of applications for release from the obligation of military service, the applicant has either been discharged for physical disability, or, more commonly, has escaped across the frontier, and we have thus far avoided a direct collision with the Italian government on this question.

The regulation of the Department requiring the renewal of passports

every year is totally disregarded by both naturalized and native American citizens, and passports are almost never asked, except for travel.

I have often strongly suspected that passports preseuted to me had been fraudulently obtained, but the only cases within my knowledge where positive proof of such fraud existed are those of a native of Alexandria, Egypt, residing in Italy, which was, I have understood, a subject of correspondence between the State Department and the consulate-general at Florence, but never came before the legation officially, and a recent instance at Messina, which, I suppose, has been reported to the Department by the consul at that place.

I have, &c.,

GEORGE P. MARSH.

[Inclosure 1.—Translation.]

Mr. Peirolieri to Mr. Wurts.

ROME, *September* 27, 1873.

Mr. CHARGÉ D'AFFAIRES: I regret to be unable to satisfy the request made in your note of the 8th instant.

The ministry of agriculture and commerce, from which I might have been able to obtain the statistics relating to the number of Americans born and residing in Italy, has replied to me that a work of this kind would require a long time and great labor, although not impossible to accomplish. In fact the lists of the census for each district make the distinction only between persons born in Italy and those born abroad. To determine the nationality of each individual it would, therefore, be necessary to examine each list of the families when the place of birth is indicated. It is, nevertheless, the intention of the bureau of statistics to study the results of the last census also from the point of view of the nationality of the foreigners residing in the kingdom. When this work is completed—a time, however, difficult still to appoint—the Government of the United States will be able to obtain all the statistics it wishes.

Accept, &c.,

A. PEIROLIERI,
For the Minister of Foreign Affairs.

No. 507.

Mr. Washburne to Mr. Fish.

No. 870.] LEGATION OF THE UNITED STATES,
Paris, October 20, 1873. (Received November 7.)

SIR: Referring to your dispatch No. 522, of August 11, and to my No. 847 of August 30, in reply I have the honor to inclose you the advertisement of a proposed American Directory, got up by the "American Register" of this city. This work will give more complete information upon the subject of the number of Americans in France than any that I can obtain from other sources, and I shall forward you a copy so soon as it shall be published, with such remarks as it may seem to call for.

In the mean time I have taken steps, by consulting the prominent American bankers here and other well-informed persons, to inform myself as well as possible upon the subject in question. It results generally from the information I have thus obtained that the number of resident Americans in France does not increase, but, on the other hand, rather diminishes; that the number of traveling Americans passing

through France increases every year, and that there have probably been 20 per cent. more of this class here this year than ever before.

As regards the number of children born in France of American parents, I have reason to believe that they are in most instances registered at the consulates. I have applied to the consul-general for information on this point, as I have already stated, and he has promised to give it to me at the earliest possible date.

In reference to American citizens registered at the "mairie," with a view to their having the option of being French citizens, I have never heard of an instance of the kind. Children born here of American parents are almost universally registered at the "mairie," because the laws of the country require it, and because it is made the duty of the attendant physician to see that it is done. Such children, I have reason to believe, do sometimes, on coming of age, select (*opter*) to become French citizens, but I know of but one such instance, and I am sure that they are extremely rare.

In reference to your fourth inquiry, I doubt if any American citizen has formally disowned American citizenship; at least no such case has ever come to my knowledge; and the laws requiring military service in France are so onerous that I doubt if any one who is free from their operation voluntarily submits himself to them.

I shall have the honor to refer to this subject again when I shall have received a copy of the "American Directory" referred to.

I have the honor to be, sir, very respectfully, your obedient servant,

E. B. WASHBURNE.

Hon. HAMILTON FISH,
Secretary of State.

[Inclosure.]

Will be published shortly,

THE AMERICAN DIRECTORY

FOR PARIS AND EUROPE.

In addition to the names and addresses of all Americans permanently residing in Paris and the differerent cities in Europe, the above work will contain many valuable documents and much useful information upon all subjects of interest to Americans residing or traveling on the Continent. Americans residing in remote parts of Europe are kindly requested to send their names and addresses to the offices of the "American Register," 2 rue Scribe, Paris, or 4 Langham Place, London, for insertion in the above.

No. 508.

REPORT OF A COMMISSION APPOINTED BY THE QUEEN OF GREAT BRITAIN FOR INQUIRING INTO THE LAWS OF NATURALIZATION AND ALLEGIANCE, WITH A MEMORANDUM BY MR. ABBOTT, (LORD TENTERDEN,) THE SECRETARY OF THAT COMMISSION. ALSO EXTRACTS FROM AN APPENDIX ACCOMPANYING THAT REPORT, SHOWING THE CONDITION OF THE LAWS OF VARIOUS COUNTRIES ON THESE SUBJECTS, WITH ADDITIONS, CORRECTIONS, AND AMENDMENTS THERETO, MADE UNDER THE DIRECTIONS OF THE SECRETARY OF STATE, IN ORDER TO MAKE THEM CONFORM TO EXISTING LAWS.

[*N. B.—By royal commission dated May* 21, 1868, *the Earl of Clarendon, Mr. Cardwell, Sir Robert J. Phillimore, Baron Bramwell, Sir John Karslake, Sir Travers Twiss, Sir Roundell Palmer, Mr. Forster, Mr. Vernon Har-*

court, and Mr. Mountague Bernard were named commissioners to inquire into the legal condition of British subjects residing in foreign countries, and to report how and in what manner it might be expedient to alter and amend the laws of the realm relating to such subjects, their wives, children, descendants or relatives; also to inquire into and consider the legal condition of aliens residing within the realm and becoming naturalized, and to report how far it was expedient to alter or amend the laws relating to them or to persons claiming rights or privileges through them. Mr. Abbott (now Lord Tenterden) was the secretary of this commission. The commission made a report to the Queen on the 20th of February, 1869, with a voluminous appendix, a copy of all which was duly transmitted to the Department of State by the minister of the United States in London. The Secretary of State transmits herewith this report, with such extracts from the appendix thereto as appear to explain the laws of foreign countries on the subject of the report. Several changes are made in the matter contained in the appendix, in order to make it conform to what are understood to be existing laws. All such changes are noted. Some American correspondence is also added, which has taken place or been made public since the report was made.]

REPORT.

To the Queen's most excellent Majesty:

We, your Majesty's commissioners appointed to inquire into the laws of naturalization and allegiance, have to state that, in compliance with the terms of your Majesty's commission, we have inquired into the legal condition of natural-born British subjects who may depart from and reside beyond the realm in foreign countries, and have considered how and in what manner, having regard to the laws and practice of other states, it may be expedient to alter and amend the laws relating to such natural-born subjects, their wives, children, descendants, or relatives. We have also inquired into the legal condition of persons, being aliens, entering into or residing within the realm and becoming naturalized as subjects of the Crown, and have considered how far and in what manner it may be expedient, having regard to the laws and practice of this country, of foreign states, or otherwise, to alter or amend the laws relating to such persons, or persons claiming rights or privileges through or under them.

We have found it necessary, in order to deal satisfactorily with the matters referred to us, to enter into some others bearing closely on them but not embraced within the express terms of your Majesty's commission; and on these latter, as well as on the former, we have thought it right to submit to your Majesty the conclusions to which we have been led.

We now humbly lay before your Majesty the following report:

I.

There are two classes of persons who by our law are deemed to be natural-born British subjects:

1. Those who are such from the fact of their having been born within the dominion of the British Crown.

2. Those who, though born out of the dominion of the British Crown, are by various general acts of Parliament declared to be natural-born British subjects.

The allegiance of a natural-born British subject is regarded by the common law as indelible.

We are of opinion that this doctrine of the common law is neither reasonable nor convenient. It is at variance with those principles on which the rights and duties of a subject should be deemed to rest; it conflicts with that freedom of action which is now recognized as most conducive to the general good as well as to individual happiness and prosperity; and it is especially inconsistent with the practice of a state which allows to its subjects absolute freedom of emigration. It is inexpedient that British law should maintain in theory, or should by foreign nations be supposed to maintain in practice, any obligations which it cannot enforce and ought not to enforce if it could; and it is unfit that a country should remain subject to claims for protection on the part of persons who, so far as in them lies, have severed their connection with it.

We accordingly submit to your Majesty the following recommendations for an amendment of the law in this respect.

1. Any British subject who, being resident in a foreign country, shall be naturalized therein and shall undertake, according to its laws, the duty of allegiance to the foreign state as a subject or citizen thereof, should upon such naturalization cease to be a British subject.

2. The principle of this rule should be applied to a woman who, being a British subject, shall become by marriage with an alien the subject or citizen of a foreign state.

3. The wife of a British subject who shall become naturalized abroad, and his children, if under the age of 21 years at the date of his naturalization, should likewise cease to be British subjects from that date; but this rule should not include a wife or child who has not emigrated to the country of naturalization, nor should it operate unless, according to the local law, the naturalization of the husband or father has naturalized also the wife or child.

4. Naturalization in a foreign country, though operating from the time of its completion as an extinguishment of the original citizenship, should not carry with it discharge from responsibility for acts done before the new allegiance was acquired.

Provision should be made for applying the same principles to the case of British subjects who have become so by naturalization.

We have considered the question whether the acquisition of a foreign domicile, or a certain length of residence abroad, should divest a person of British nationality. We have not been able to satisfy ourselves that either continued residence or domicile could be practically adopted as a rule to determine the allegiance of the subject, having regard to the difficulties which attend the definition of domicile and proof of the fact, and also to the great diversity of circumstances under which men reside in foreign countries.

II.

It is expedient that the foregoing recommendations should be applied to British subjects already naturalized in foreign countries, as well as to those who may hereafter become so. A certain period, however, not less than two years, should be allowed, within which any person already so naturalized (that is, before the proposed alteration of the law is made) might declare his desire to remain a British subject. The mode in which this should be done might be settled reciprocally by treaty or otherwise with such foreign governments as are willing to permit it to operate as

an extinguishment of the acquired allegiance. In the absence of such an agreement, the naturalized person might make a formal declaration of such his desire, if resident abroad, before a British minister or consul, or, if within your Majesty's dominions, before a justice of the peace, such declaration to be registered or recorded in such manner as might be judged expedient, in the United Kingdom by the secretary of state for the home department, in a colony by the governor or other chief officer of the government. Any person thus electing within the prescribed period to remain a British subject should be deemed to retain his British nationality, and the benefit of this election should extend to his wife, and to his children if under age at the time; but the election should not (unless permitted by the state of his naturalization to extinguish his acquired allegiance) entitle him or them to claim any British privileges when within the territories of that state.

These provisions should be deemed to apply to women already naturalized abroad by marriage with an alien or by the foreign naturalization of their husbands, and to children already naturalized abroad by the foreign naturalization of their fathers. Such women, becoming or having become widows, and such children, attaining or having attained the age of 21 years, should be enabled to retain their British nationality by exercising a like option at any time before the expiration of the period to be limited as aforesaid.

Persons already naturalized abroad who might not exercise this option within the prescribed period would be able at any time afterwards to regain British nationality in the mode pointed out in a subsequent part of this report.

III.

The above recommendations, if carried into effect, would impose the condition of aliens upon many persons who have hitherto enjoyed the legal rights proper to British subjects. It was necessary, therefore, to consider what effect the deprivation of such rights would have upon those affected by the change. And here it was impossible to overlook the serious question raised by the existence of those disabilities which (subject to certain limitations) attach by law to aliens in respect to the holding and inheritance of real estate in the United Kingdom.

Those disabilities have hitherto only affected persons who had never been regarded by the law as natural-born British subjects, such persons alone coming within the legal definition of aliens. But when it is proposed to bring within the same category a new class of persons who, having been originally British subjects, are for the future to lose that character, different considerations arise. To deprive persons already naturalized abroad, who now enjoy the right of holding and inheriting lands, of that right, might be thought harsh if not unjust. In the case of those who may become so naturalized hereafter, the same objection would not arise; but even here the penalty of exclusion from possible rights of inheritance appears to be an impolitic restriction on the liberty of emigration.

We have to choose, then, between two courses: one is to maintain the existing disabilities, making special provision for the new class of cases to which our recommendations would give rise; the other, to abrogate the disabilities altogether in respect of all classes of aliens.

The first course, viz, that of making special provision for expatriated British subjects who will now become aliens, while it would break in upon the general principle, might, in practice, be productive of embar-

rassment and litigation. We have accordingly considered the other course. The question whether aliens ought any longer to be prohibited by our law from holding landed property within the realm has not, indeed, been expressly referred to us by the terms of Your Majesty's commission; but we have found it impossible to deal with the position of those who, under the terms of our previous recommendations, will cease to be British subjects, without forming an opinion as to the position of aliens generally in this respect.

We think it right to point out that not only can aliens hold real estate in France and many other European countries, but they are also enabled by colonial enactments to hold real estate in the Dominion of Canada, (except New Brunswick,) British Columbia, Cape of Good Hope, Natal, Queensland, Victoria, South Australia, St. Kitts, and Hong-Kong, while the regulations prohibiting aliens from possessing real estate have recently been repealed in Bengal, and are now under revision in Madras and Bombay.

By the act of 1844, (7 and 8 Vict., c. 66,) "every alien now residing in, or who shall hereafter come to reside in, any part of the United Kingdom, and being the subject of a friendly state, may, by grant, lease, demise, assignment, bequest, representation, or otherwise, take and hold any lands, houses, or other tenements, for the purpose of residence or of occupation by him or her, or his or her servants, or for the purpose of any business, trade, or manufacture, for any term of years not exceeding twenty-one years, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions, and privileges, except the right to vote at elections for members of Parliament, as if he were a natural-born subject of the United Kingdom."

This term of twenty-one years may, of course, be renewed.

We have arrived at the conclusion that the grounds formerly assigned for the rule are either untenable in themselves or have ceased to be applicable; and we are prepared, therefore, instead of making any distinction between the two classes of aliens, to recommend that the present disabilities of alienage in respect of the holding and inheritance of land should be abolished altogether.

It has been suggested that, in time of war, danger might occasionally arise from the possession of land by aliens. We think it sufficient to say that this is a danger against which, should it be deemed serious enough to demand special legislation, it would not be difficult to guard

IV.

In considering whether the character of a natural-born British subject should be regarded as indelible, and, if not, how it should be lost, we have found it necessary to consider also whether any changes should be made in the laws which determine what classes of persons should be deemed to possess that character.

There are two classes with respect to whom this question may be raised. They are—

1. Persons of foreign parentage born within the dominions of the Crown;

2. Persons of British parentage born abroad.

All persons, of whatever parentage, born within the dominions and allegiance of the Crown, are, by the common law, natural-born British subjects. All persons, on the other hand, of whatever parentage, born beyond its dominions and out of its allegiance, were, by the common law, regarded as aliens.

By various statutes it has been enacted as follows:

25 Edw. 3, stat. 2: "All children inheritors which henceforth shall be born out of the ligeance of the king, whose fathers and mothers at the time of their birth be and shall be at the faith and ligeance of the King of England, shall have and enjoy the same benefit and advantage, to have and bear inheritance within the same ligeance as the other inheritors aforesaid, in time to come; so always that the mothers of such children passed the sea by the license and will of their husbands."

7 Anne, c. 5: "The children of all natural-born subjects born out of the ligeance of Her Majesty, her heirs and successors, shall be deemed, adjudged, and taken to be natural-born subjects of this kingdom, to all intents, constructions, and purposes whatsoever."

4 Geo. 2, c. 21: "And whereas some doubts have arisen upon the construction of the said recited clause in the said act of the seventh year of her late Majesty's reign, now, for the explaining the said recited clause in the said act, relating to children of natural-born subjects, and to prevent any disputes touching the true intent and meaning thereof, be it enacted that all children born out of the ligeance of the Crown of England or of Great Britain, or which shall hereafter be born out of such ligeance, whose fathers were or shall be natural-born subjects of the Crown of England or of Great Britain, at the time of the birth of such children respectively, shall and may be adjuged and taken to be natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever."

13 Geo. 3, cap. 21: "All persons born, or who hereafter shall be born, out of the ligeance of the Crown of England or of Great Britain, whose fathers were or shall be, by virtue of a statute made in the fourth year of King George the Second, to explain a clause in an act made in the seventh year of the reign of Her Majesty Queen Anne, for naturalizing foreign Protestants, which relates to the natural-born subjects of the Crown of England or of Great Britain, entitled to all the rights and privileges of natural-born subjects of the Crown of England or of Great Britain, shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever, as if he and they had been and were born in this kingdom."

Without entering into any discussion on the construction of these statutes, we think it right to state that, so far as we are aware, no attempt has ever been made on the part of the British government (unless in eastern countries where special jurisdiction is conceded by treaty) to enforce claims upon, or to assert rights in respect of, persons born abroad as against the country of their birth while they were resident therein, and when by its laws they were invested with its nationality.

A rule corresponding to that of the English common law has been retained by the United States. Every person born within the limits and jurisdiction of the United States is an American citizen by American law. But it is also provided by an act of Congress passed in 1855, that "Persons heretofore born, or hereafter to be born, out of the limits of the jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States."

By the Code Napoléon, (art. 10,) "Tout Français né d'un Français en pays étranger est Français." As to children born in France, they were under the code French if their fathers were French, aliens if their fa-

thers were aliens, but with a right in the latter case to claim French citizenship on making a declaration and fixing their domicile in France. An exception has been introduced, however, by a law passed in 1851, by which, if the alien father were also born in France, the child is deemed French, but is at liberty to claim the status of an alien on attaining twenty-one years of age.

The Prussian law of 1842 declares that "every legitimate child of a Prussian subject is, by birth, a Prussian subject, even though born in a foreign country."

Of these two tests of nationality—the place of birth and the nationality of the father—neither is at present adopted without qualification by British, French, or American law. The laws of these countries exhibit, in fact, different combinations of the two, Great Britain and the United States laying chief stress on the place of birth, while in France the father's nationality determines, though not absolutely and in all cases, that of the child; and this latter theory has found acceptance among other European nations.

The rule which impresses on persons born within your Majesty's dominions the character of British subjects is open to some theoretical and some practical objections, of the force of which we are aware. But it has, on the other hand, solid advantages. It selects as the test a fact readily provable; and this, in questions of nationality and allegiance, is a point of material consequence. It prevents troublesome questions in cases (numerous in some parts of the British Empire) where the father's nationality is uncertain; and it has the effect of obliterating speedily and effectually disabilities of race, the existence of which within any community is generally an evil, though to some extent a necessary evil. Lastly, we believe that of the children of foreign parents, born within the dominions of the Crown, a large majority would, if they were called upon to choose, elect British nationality. The balance of convenience, therefore, is in favor of treating them as British subjects unless they disclaim that character, rather than of treating them as aliens unless they claim it. The former course is, of the two, the less likely to inflict needless trouble and disappoint natural expectations.

We do not therefore recommend the abandonment of this rule of the common law, but we are clearly of opinion that it ought not to be, as it now is, absolute and unbending. In the case of children of foreign parentage, it should operate only where a foreign nationality has not been chosen. Where such a choice has been made it should give way.

As to the second class—persons of British parentage born abroad—we think it expedient that the statutes now in force should be repealed, in order to introduce some limitations and place the law on a clearer and more satisfactory basis. Birth abroad is often merely accidental, while of those British subjects who go to reside in foreign countries a great number certainly prize British nationality for themselves, and wish that it should be enjoyed by their children. The law, as it stands, concedes this benefit to their children born abroad, and we do not recommend that it should be withdrawn; but we think that the transmission of British nationality in families settled abroad should be limited to the first generation.

The following recommendations embody the conclusions we have formed on this branch of the subject:

As to persons born within the dominions of the Crown:

(*a.*) All persons born within the dominions of the Crown should be regarded by British law as British subjects by birth, except children born of alien fathers and registered as aliens.

(*b.*) Provision should be made for enabling children, born within the dominions of the Crown, of alien fathers, to be registered as aliens; and children so registered should be thenceforth regarded as aliens. The child, if not so registered on his birth or during his minority by his father or guardian, should be permitted to register himself as an alien at any time before he has exercised or claimed any right or privilege as a British subject.

(*c.*) If the father, being an alien when the child was born, becomes during the child's minority naturalized as a British subject, the child, though registered as an alien, should follow the condition of the father.

2. As to persons born out of the dominions of the Crown:

(*a.*) Every child born out of the dominions of the Crown, whose father at the time of the birth was a British subject, should be regarded by British law as by birth a British subject, provided the father was born within the dominions of the Crown, but not otherwise.

(*b.*) Provided, that any such person as aforesaid who, according to the law of a foreign country, is a subject or citizen of that country, and who has never exercised or claimed any right or privilege as a British subject, should, in the administration of British criminal law, be treated as a subject of the country in which he was born.

(*c.*) And if any such person, charged with a criminal offense for which an alien would not be liable to be tried, should successfully defend himself on the ground that he was not, in respect of the act alleged, amenable as a British subject to the criminal law of this country, he should be thenceforth, to all intents and purposes, an alien.

(*d.*) If, before the child's birth, the father had become naturalized in the foreign country, he would, under our previous recommendations, have ceased to be a British subject. If he should become so naturalized during the child's minority, the child born abroad should follow the condition of the father.

(*e.*) By the statute 12 and 13 Vict., c. 68, provision is now made for the registration at British consulates abroad of marriages of British subjects celebrated abroad; and official copies of such registers are made evidence in the courts of this country. We think that a similar system of registry, with the like legal effect, should be adopted for the purpose of procuring evidence (as far as practicable) of births and deaths of British subjects abroad, due provision being made for securing the accuracy of such registration; and we further recommend that such registries should be established in all British legations as well as consulates.

The above recommendations, in so far as they may be inconsistent with the present law or practice of this country, are not intended to apply to children born of Brtish fathers within the dominions of the Ottoman Porte, China, Japan, or other countries with which Great Britain may have special treaties for exclusive jurisdiction, nor any part of Asia or Africa not the possession of some civilized state. As to such children we contemplate no alteration in the existing law.

V.

We have considered the present practice of naturalization under the act 7 and 8 Vict., c. 66. In dealing with this question we have desired to give effect to our opinion, that to be a British subject is a valuable privilege, to be considerately imparted to those who desire its advantages and are willing to undertake its duties. If aliens are, as we recommend, made capable of holding real estate, the considerations applicable

to the question will be simplified; the inducement which now most commonly leads foreigners to apply for naturalization will be removed; the rights conferred by it will be political rights; and we think, on the one hand, that these rights should in no case be granted without the security which previous residence affords, and, on the other, that when granted they should be full and complete. We recommend, therefore, that the act should be amended so as to make a certain length of residence in the United Kingdom, or of service under the British Crown, to be proved to the satisfaction of the secretary of state, a necessary condition of obtaining the privilege of naturalization; that, subject to this condition, the privilege should continue to be granted at the discretion of the secretary of state; and that a person so naturalized should be thereupon entitled to all the rights and privileges of a natural-born British subject within the United Kingdom.

This alteration of the law, if made, will be incompatible with the continuance of the practice of issuing certificates of naturalization revocable or determinable if the naturalized person resides abroad for six months without the permission of the secretary of state, a practice which, in other respects, appears to us to be open to serious objections.

VI.

We have previously stated our opinion that British-born subjects, who have already been naturalized in foreign countries, should be allowed a period of not less than two years within which to resume their original nationality.

We further recommend that provision should be made to enable British-born subjects, who may at any time have lost their British nationality, to be re-admitted to the privileges of British subjects by a system similar to that by which aliens are naturalized in this country, and on the same condition of a previous term of residence. Such persons should only be re-admitted to British nationality at the discretion of one of Her Majesty's principal secretaries of state, on addressing a memorial to the secretary of state setting forth the grounds on which they seek re-admission, and their intention thenceforth to reside and settle within the British dominions. The secretary of state might then, if he saw fit, and on being satisfied that the prescribed conditions were complied with, grant certificates re-admitting the applicants to the rights and capacities of natural-born British subjects, on their taking an oath of allegiance; but such certificates should not entitle the holders to British privileges within the country of their foreign naturalization, should they return thereto, unless according to its law they had ceased to be subjects or citizens of that country.

The wives, or children under 21 years of age, of persons so re-admitted to British nationality, should also, if resident within the British dominions, be considered and taken to be British subjects from the date of that re-admission, subject to the above reservation.

The same rule as to re-admission should apply to women of British birth whose British nationality had been lost by marriage with an alien, on their becoming widows; but the children of such women, born of an alien father, should not by the re-admission of the mother become naturalized as British subjects.

The foregoing provision will apply to the case of persons who shall desire to be re-admitted within the United Kingdom to the privileges of British subjects.

It seems also desirable to make provision for the case of persons who, having lost their British character, may desire to be re-admitted within the colonial dominions of the Crown to the advantages of British nationalty.

In the case of an alien-born, naturalization in the United Kingdom under the act of 1844 does not confer any rights of nationality within the colonies, (10 and 11 Vict., c. 83.) On the other hand, colonial naturalization confers no rights of nationalty beyond the limits of the colony granting naturalization.

The case of persons, however, who have lost their British nationality by force of such enactments as those which we recommend, will stand upon a different footing. When they are re-admitted to British nationality within the United Kingdom they will also recover it in the colonies, since no colonial law has deprived them of their nationality.

We think it advisable that the governors or chief officers in the colonies should have a similar power to re-admit such persons to British nationality upon the same conditions as to residence and otherwise as those prescribed for re-admission in the United Kingdom. Persons so re-admitted will thereupon revert to their former rights, as in the case of re-admission within the United Kingdom.

VII.

In the foregoing recommendations we have endeavored to diminish the number of cases in which one who by British law is a British subject is regarded by foreign law as a foreign subject or citizen, and to obviate, as far as possible, the difficulties and inconveniences arising from such a double allegiance. But this, we are aware, cannot be done, otherwise than imperfectly, by British legislation alone; it requires the co-operation of foreign governments and legislatures.

If Great Britain renounces the doctrine of indelible allegiance, and acknowledges that British subjects can divest themselves of their nationality by foreign naturalization, it may be hoped that the same principles will be recognized by other countries with respect to aliens naturalized within the British dominions; and we accordingly recommend that efforts should be made to procure that reciprocity, as well as to secure to the children of British subjects born abroad, the same power of choosing their nationality which it is proposed to confer on the children born of alien parents within British territory.

This might be effected by agreements or conventions concluded with different states separately; or better, perhaps, by means of a general understanding arrived at, in conference or otherwise, by the powers most interested in the subject.

VIII.

Among other matters which have been brought under our notice, we have had occasion to remark the unsatisfactory results of the operation of the law enabling aliens to claim a jury *de medietate linguæ*.

The mixed jury was instituted by Edward III as an encouragement to foreign woolen merchants to resort to the English market, (27 Edw. III, stat. 2, c. 3, and 28 Edw. III, c. 13.)

The clauses of the statutes enacting it were confirmed by the act 8, Hen. VI, c. 29, and by the last act for consolidating and amending the laws relating to jurors and juries, (6 Geo. IV, c. 50.)

It is settled law that those members of a mixed jury who are foreigners need not be of the same nationality as the alien; they need not even speak the same language, but may each of them belong to a different nation and speak a different tongue.

We see no advantage in the maintenance of such a system, while the inconveniences which may arise from it are obvious; and we accordingly recommend that the statutes authorizing trials by mixed juries should be repealed.

We have not thought it necessary, in making these recommendations, to enter into any general review of the subjects referred to us; as a full account of British and foreign laws, and of the diplomatic correspondence which has passed between Your Majesty's government, the Government of the United States, and other governments is contained in the memorandum by our secretary, Mr. Abbott, and other papers annexed to our report.

CLARENDON. [L. S.]
EDWARD CARDWELL. [L. S.]
ROBERT PHILLIMORE. [L. S.]
W. E. FORSTER. [L. S.]
*G. BRAMWELL. [L. S.]
TRAVERS TWISS. [L. S.]
J. B. KARSLAKE. [L. S.]
ROUNDELL PALMER. [L. S.]
†W. VERNON HARCOURT. [L. S.]
*M. BERNARD. [L. S.]

CHARLES S. A. ABBOTT, *Secretary.*
February 20, 1869.

*We concur, except on one point, with the recommendations of the report. As that point is important, we think it right to express our dissent, and to state, very briefly, the reasons on which it is founded.

The report recommends, (Section IV, recommendations 1, *a b*,) that the child born within the dominions of the British Crown of an alien father should be regarded by British law as a British subject. This is the subsisting rule of the common law. A majority of the commissioners think that it should be retained, but that provisions should be engrafted on it, which would enable such persons, during minority or at any time afterward, to assume, by simple registration, the condition of aliens. We think otherwise, for the following reasons: Such a law tends to produce, and must produce, in many cases, that double allegiance which we all hold it desirable, as far as possible, to extinguish. (Report, Section VII.) It is inconsistent in principle with the recommendation that the child born abroad of a British father should be regarded by British law as a British subject. It is at variance with the law and practice of other European states. It agrees, indeed, with those of the United States of America; but this very agreement, if examined, will be found to be such as to make a conflict of claims between the two countries more probable. None of the duties of a British subject could practically be enforced against a person who, though born here, had always resided in the foreign country to which his father belonged. He could not, if he happened to be here, be justly made amenable to any duties other than such as the law imposes on all commorant foreigners; but he would, nevertheless, possess the rights of a subject, without having any real title to them. He might renounce, indeed, if he pleased, his British allegiance. But why should he renounce that which might be a benefit to him and could not be a bur-

den? If, on the other hand, he were regarded as an alien by birth, he could (provided he were resident here) obtain the advantages of nationality by undertaking its obligations.

We do not dispute that the common-law rule, which impresses British nationality at the moment of birth on all persons born on British soil, has arguments of some weight in its favor, nor that the substitution of a different rule would be attended by some inconveniences. But these inconveniences, which would rapidly diminish as the new rule became known and understood, do not, in our judgment, constitute a sufficient reason why, in deliberately revising our law on a matter which concerns foreigners as well as Englishmen, we should forego the great advantage of legislating on a consistent and generally accepted principle, and that principle one which is intrinsically reasonable and sound.

The qualification that, where the father, though an alien, was born here, the child, likewise born here, should be deemed a British subject, appears to us to limit conveniently the application of the principle without substantially breaking in upon it. An analogous provision has been adopted in French law.

GEORGE W. W. BRAMWELL.
MOUNTAGUE BERNARD.

† Concurring, as I do, in the fundamental recommendation of the report contained in its first section, I have thought it right to sign the report.

I feel compelled, however, after the best consideration I have been able to give to the subject, to dissent from the scheme contained in Section IV of the report for determining the nationality of children of foreign parents born within the realm.

Most persons will probably agree that the true rule for determining nationality, if it were practicable, would be found in the principle of domicile, *i. e.*, that the home of a man's choice should also be the country of his allegiance; and, indeed, the report asserts the soundness of this principle. The difficulty, however, of ascertaining the true domicile of a person resident in a foreign country, in the legal acceptation of that term, is a bar to its adoption in a case where it is requisite that the rule should be simple and obvious. Of all questions of law those which concern domicile are the most complicated and obscure, because they ultimately depend upon intention, which is necessarily of all things the most difficult to determine. We are driven, therefore, to adopt some less accurate but more practical rule, which shall approximate to though it may not reach the same result.

In the case of persons born within British territory, of Britith parents, the presumption of British nationality and British domicile is, of course, conclusive. In the case of persons of British origin who have formally accepted a foreign naturalization, the presumption of change of domicile, and, therefore, of nationality, is sufficiently evidenced by the overt act of naturalization; and to such a condition of things the provisions of Section I of the report apply themselves. Here the nationality follows distinctly the domicile which is clearly ascertained.

But there exist further two classes of cases with which Section IV of the report deals, viz, (1) that of the children born of British parents abroad, and (2) that of children of foreigners born in the dominions of the Crown. In these cases the real domicile may be said to be indeterminate, or at least ambiguous; for the British subject resident abroad or the foreigner resident in England may, in either case, desire to adhere to the domicile of his origin.

Hitherto, as is well known, by the common law of England, inherited rather than adopted by the United States, the nationality of such children has been determined solely by the locality of their birth. The inconveniences of this principle, where rigorously applied, have been universally recognized. The statute law of England and America has made provision to remedy its operation in the case of the children of their own subjects born abroad. Indeed, the rule is wholly indefensible in principle. By the law of all modern nations the condition of the child primarily depends on that of the father. But the doctrine of deriving nationality from the locality of birth makes it depend on the accidental situation of the mother; and by this rule a child may become a subject of a country in which his father not only never made his home but which he never even entered.

The rule of determining nationality by locality of birth was of purely feudal origin, and accordingly in the legislation of modern Europe since the French Revolution it has been discarded as the governing principle among continental nations. The Code Napoléon has adopted another principle, viz, that the nationality of the child should follow the nationality of the father, in the absence of any proof of an election on the part of the child to adopt the nationality of the country of his birth. This doctrine seems sound in principle. In the absence of naturalization by the father in the country of the birth of the child, there is no ostensible evidence of the desire of the father to change his domicile or his country. The nationality of the child ought not, therefore, to be altered while that of the father remains unchanged, except by some deliberate act of the child. That this principle is also convenient in its operation is proved by the fact that almost all continental states have in practice adopted the doctrine of the Code Napoléon; and, as has been mentioned above, it has been incorporated into the statute law of England and America in the case of their own subjects born abroad. That the commissioners do not dissent from this rule is shown by the fact that in Section IV (§ 2) as to persons born of British fathers out of the dominions of the Crown, they recommend that the nationality of the child shall, in the first instance, be determined by that of the father.

But in the same section, (Section IV, § 1,) in the case of children of foreign parents born within the realm, the report proposes that the old rule of the locality of birth should *prima facie* prevail.

From this latter recommendation I dissent, and that for several reasons:

(1.) If it is desirable to recast the doctrine of nationality by such extensive changes as those proposed in the report, it seems expedient to found the whole system on some intelligible and self-consistent principle. It would be difficult to suggest any reason for adopting the rule by which the nationality of the father determines that of the child in the case of the children born of British fathers abroad, which does not equally apply to the case of the children born of foreign fathers in England; and to lay down an opposite rule in the two cases seems not only indefensible in principle, but to be a course which, in respect of policy, is very likely to be misunderstood by foreign governments. If, while we assert that the child born of an Englishman abroad is a British subject, we also claim that the child born of a foreigner in England is likewise a British subject, it will be thought that acting for our own advantage on inconsistent principles we are grasping at the combined chances of a double event.

(2.) It seems very desirable, as is stated in Section VII of the report, to lay down some rule in which all or most states are likely to agree.

Now, the rule of determining the nationality of the child *prima facie* by that of the father is adopted by all states as regards the children born of their own subjects abroad. As regards the children of foreigners born in the realm, it is adopted by all states except England and America. It is obvious, therefore, that this is the rule by the adoption of which will be most readily obtained that consent of nations which on such a subject is of capital importance. It is stated in Section VII of the report that "we have endeavored to diminish the number of cases in which one who by British law is a British subject is regarded by foreign law as a foreign subject, and to obviate as far as possible the difficulties and inconveniences arising from a double allegiance." In that object I entirely concur; but it seems to me that it is not accomplished but rather defeated by laying down the rule that the child born of a foreigner in England is *prima facie* a British subject. In the view of every state (including the United States, so far as regards the children of born Americans in England) such person is a subject of the state of his father's origin; and therefore the proposed rule necessarily creates all the difficulties and inconveniences of a double allegiance. Assume, on the other hand, the rule adopted by the report in the case of the children born of British parents abroad, to be applied consistently to the case of the children born of foreign parents in England, it will be seen that the desired object will be completely accomplished. If the child B, of a foreigner A, is born in England, he would then be regarded by the English law as a foreigner; and so he would be regarded by all the world; and thus there would be no conflict of allegiance. Suppose A, the father, to become naturalized in England, then B, the child, would be by English law a British subject, and cease to be the subject of the country of his father's origin—and so he would be regarded by all the world—assuming the United States to adopt (as we have reason to believe they would adopt) the principle laid down in Section I of the report, viz, that foreign naturalization extinguishes the native allegiance. The same thing would occur if B were himself naturalized. And thus, by the adoption of a simple and consistent rule, we should lay the foundation of a general harmony in the doctrine and practice of nations which is not only of theoretical value but of great practical consequence; for nothing would more solidly conduce to the peace of the world than that the same allegiance should be predicated of the same person by all governments.

(3.) I am by no means insensible of the practical conveniences which may result in some cases from the adoption of the rule of the locality of birth, which are set forth in Section IV of the report, but there appear to be grave disadvantages attendant on the rule which more than counteract them. Such a rule, as has been shown above, will have the effect of imposing the quality of British subjects on a number of persons who neither seek nor desire it. It is true that the report makes provision in the case of such persons for a machinery by which they may divest themselves of that character. Upon this it may be observed that a foreigner *in transitu* may, through ignorance or carelessness, omit to take measures which shall have the intended effect. But it is not necessary to urge this point, because in fact it would be as impossible in the future as it has proved in the past, to insist against the will of the individual on his British character thus imposed by the mere accident of birth. The real evil to this country is of an exactly opposite character, viz, that by this rule persons are clothed with the character of British subjects, and become entitled to all its benefits, who have no real connection with the community, and who ought to have no claims upon it.

It is not probable that any foreigner accidentally resident in this country would disclaim the citizenship for his child which the law would confer, for the simple reason that the child would be enabled to take all the benefits but could in no case be really made to fulfill the obligations of a British subject. Under this rule the child of a foreigner born here might return to his own country in his infancy, and he would thereafter possess whenever he chose to claim them, not only for himself, but (since he is a natural-born British subject) for his children also, all the benefits of the character of a British subject, while it is abundantly clear that neither he nor his children could ever be called upon to perform any of its duties. This is the practical mischief of the present rule, and to re-enact it would be to give fresh authority to a principle the inconvenience of which is sufficiently apparent. Nothing can be more politically inexpedient than that this country should be exposed to the claims of a class of persons who have no interest in its welfare, and who, neither by origin, nor domicile, have any community with its affairs.

On the other hand, in the case of foreigners and their children who really desire to incorporate themselves and their interests in the common stock of this country, and to embark their fortunes with ours, there seems neither hardship nor inconvenience in requiring that they should evidence their intention to change their nationality and adopt a new domicile by some formal act which, while it would establish their British nationality, would at the same time terminate their foreign allegiance. They would then no longer be able to blow hot and cold, and adopt in turn such nationality as happened for the moment to suit their interests. If the alien father is domiciled in England, and intends to cast in his lot and that of his family with this country, why should he object to naturalize himself or his child? But if he is unwilling by such an act to sever his connection or that of his family with the country of his origin, why should we embarrass our relations with foreign states by conferring our nationality on such a person—to his advantage, it may be, but certainly not in any respect to our own?

If the father and the child are really domiciled in this country, the process of naturalization would be simple and easy, and having regard to the recommendation in Section V of the report it will be seen that a person so naturalized will enjoy all the advantages which belong to a natural-born subject; if they are not so domiciled I venture to think the child ought not to acquire the privilege of British nationality by the simple accident of birth. The great importance of insisting on naturalization in such cases is, that it is by this means alone that the double allegiance can be avoided. For this purpose it is essential that the act which confers the nationality should in itself openly and unambiguously terminate the old allegiance. This the rule which requires naturalization of a foreigner born in England as a condition of British nationality would do; while the rule conferring nationality by the mere fact of birth would give the new nationality without dissolving the old allegiance.

I should therefore propose that in the case of the children of foreigners born within the realm, the following rule should be adopted:

"Children born within the realm of alien fathers who have been themselves born abroad shall be deemed aliens. But such children shall become British subjects (1) upon the naturalization of their fathers, or (2) upon their being themselves naturalized either by their fathers during their minority or by themselves at full age."

This rule would make the child born in this country, of an alien father also born in this country, a British subject by birth, and in this respect

it accords with the French law. Though apparently somewhat in conflict with the general principle, it is in fact in strict conformity with the principle which makes domicile the governing rule of nationality; for though the presumption of domicile is very small from the mere fact of the place of birth of a single individual in one generation, it becomes very strong when the birth both of the father and the child takes place in the same country. Such a condition of things may be safely taken as a sufficient proof of permanent change of domicile and of the election of a new nationality, which could not be inferred from a solitary and isolated instance.

There is another point affecting the latter part of Section IV of the report, on which I feel great difficulty. Though I concur in the principle laid down in Section IV (§ 2 a) of the report, by which it is declared that the children born of British fathers abroad "should be regarded by British law as British subjects," I greatly doubt the expediency of the declaration in the same section (§ 2 b) that "in the administration of British criminal law" such children are under certain conditions not to be treated as British subjects. The word "subject," in my understanding of the term, involves of necessity subjection to the laws of the state of which such person is a subject, and above all subjection to its criminal law. If it is necessary (though I think that is more than doubtful) to create a class of persons who shall be capable of all the privileges while they are liable to none of the obligations of citizens, it would be desirable to discover for such a class some more appropriate title than that of "subjects." What is no doubt intended is that such persons should have the capacity of becoming at their election British subjects, and that till they have exercised the option to enjoy the benefits, they shall not be called upon to bear the burdens of that character, but that after they have claimed the advantages they shall not be able to decline the obligations of subjects. But surely if this be the view which it is intended to present, it should be distinctly asserted that while the person is not amenable to the law of England he is not yet a British subject, and that as soon as he becomes a British subject he is at once amenable to that law. I cannot, therefore, assent to a definition which speaks of a person as "regarded by British law as by birth a British subject," (Section IV, § 2 a) and of the same person, at the same time, under certain conditions, as a person "who in the administration of British criminal law should be treated as a subject of the country in which he was born," (Section IV, § 2 b.) The question of whether a particular individual who is thus declared a British subject is or is not amenable to our criminal law is made to turn upon the point of whether he has or not "ever exercised or claimed any right or privilege as a British subject." I confess that in terms so general and vague there seems to me to lurk a dangerous ambiguity very intractable in the administration of criminal law. What are these "rights and privileges;" what is to be the extent of the "exercise" or the nature of the "claim" which by their absence or their presence are to sustain or to defeat the jurisdiction of the Crown over persons who are nominally British subjects? This distinction seems to constitute the same person a British subject by birth in the view of the English civil law, and to leave him an alien in the eye of the English criminal law. There may be persons against whom it is inexpedient that the rights of the Crown should be actually enforced in particular cases. But this is a very different thing from a formal declaration that there exist persons legally called "British subjects" who are not justiciable in the courts of the Queen.

W. VERNON HARCOURT.

APPENDIX NO. 1.—NATURALIZATION AND ALLEGIANCE.

Observations to accompany memorandum on naturalization and allegiance

The practical question at the present time is, whether Great Britain shall adopt the principle of expatriation, advocated by the Government of the United States and incorporated in the recent treaty between that country and Prussia?

In order fully to understand the position occupied by the United States and Great Britain on this matter, it is necessary to consider the principles on which naturalization and expatriation are carried out by different countries.

There are five main systems of naturalization:

1. By taking an oath of allegiance and obtaining a certificate, granted at the discretion of the government, as in England.

2. By certificate from a court of law, granted on proving residence for a stated period and taking oath of allegiance, as in Canada.

3. By residence for a stated period, and certificate from the government, without oath, as in France.

4. By employment in the public service, or certificate from the government, as in Prussia.

5. By residence for a stated period, renunciation of native allegiance, and by taking an oath of allegiance to adopted country, as in the United States.

Provision is also made by many countries for the exceptional naturalization of aliens, as in England, by two years' naval service during war, and in the United States by service in the army with one year's residence.

There are three distinct doctrines of expatriation:

1. The continental, as embodied in the Code Napoléon, by which an emigrant incurs the loss of civil rights in his native country, ("privation des droits civils par la perte de la qualité de Français;" "perdita della cittadinanza.") Should the emigrant return to his native country, this loss of civil rights may be accompanied by penal consequences, as in Austria, when the emigration has taken place without the permission of the government.

Looking to the circumstances under which the Code Napoléon was framed, and to the continental practice of conscription, it is obvious that expatriation, as provided for in that code, and in the laws subsequently founded on it, was intended to punish, and not to encourage, emigration.

2. The American, or theoretical. The American doctrine has varied from Mr. Wheaton's axiom, when minister to Berlin in 1840, that native nationality reverted on return to the native land, to Mr. Cass's in 1858, that, should a naturalized foreigner "return to his native country, he returns as an American citizen, and in no other character."

While American politicians argue that "perpetual allegiance is a doctrine of barbarism," no provision is made in the statutes of that country for the expatriation of Americans. This anomaly has been frequently pointed out, and was remarked upon in the recent debates in the House of Representatives, when one of the speakers urged that, before asking other countries to alter their laws, the United States should set the example by altering their own.

3. The English. Originating in the feudal idea of native and indelible allegiance to the prince of the country in which the subject was born, the English doctrine has been gradually modernized into a system of native nationality adapted to a commercial people.

It is in this latter spirit, with a view to retaining the connection between British subjects residing for mercantile purposes in foreign countries and their native land, that the statutes declaring the sons and grandsons of British subjects born abroad to be British subjects must now be regarded.

There are, therefore, two conflicting principles of expatriation; the continental, which punishes emigration by loss of civil rights, but does not necessarily admit that such emigration can free the emigrant from the obligations of his native nationality; and the American doctrine, which claims for the subjects of other countries (but does not grant by law to Americans) the right of free expatriation.

That this right is denied by most continental countries is shown by the fact that a Frenchman, whose certificate of foreign naturalization is not of three years' date, is liable to the French conscription; a Russian, naturalized abroad, may be expelled from Russia; even a Prussian, under the new treaty with the United States, must reside uninterruptedly in America for five years, as well as be naturalized, before he can change his nationality. Each country hampers expatriation with such restrictions as it thinks fit, and this must probably continue to be the case so long as the present conscription laws are retained.

There does not seem any evident reason why such restrictions should be imposed by Great Britain if the principle of expatriation were adopted.

In the Prince Regent's declaration of 1813, the necessity for maintaining the doctrine of indissoluble allegiance is based upon the right of the Crown to the services of its subjects, specially seamen, in time of war.

A similar argument was urged by Lord Stowell and at the negotiations for the treaty of Ghent.

In fact, in those days, Great Britain stood toward the United States, as regards maritime conscription, much in the same position as the continental countries now stand with regard to their military conscription.

But the practice of impressment has now fallen into desuetude and is not likely ever to be revived.

The further claim to punish as traitors British subjects found in arms against their native country, was practically abandoned when the prisoners taken in the United States service were unconditionally exchanged in 1814, without having been brought to trial as threatened.

It must be remembered that the theory of treason is the same in England and in the United States. The law of France punishes with death a Frenchman (whether naturalized abroad or not) who is taken in arms against France.

The right of impressment having been given up, and the doctrine of treason thus modified by practice, there does not now remain any claim which Great Britain need seek to maintain upon the allegiance of British subjects emigrating to foreign countries.

Moreover, the interest of the British colonies in urging the right of free expatriation is only second to that of the United States. Indeed, any privileges or rights which may be accorded to Germans, or others, becoming naturalized in the United States, and which may not be secured equally for emigrants to the colonies, more especially Canada, would offer a direct premium on emigration to the former, to the manifest disadvantage, and probably discontent, of the latter.

The importance of this view of the subject will be seen from the following statistics, taken from the census of 1861:

UPPER CANADA.

Total population	1,396,091
Born in the United States	50,758
Born in Prussia, German States, and Holland	22,906

LOWER CANADA.

Total population	1,110,664
Born in the United States	13,641
Born in Germany, &c	949

NEW SOUTH WALES.

Total population	350,860
Born in Germany	5,467

QUEENSLAND.

Total population, (exclusive of aborigines)	30,059
Born in Germany	2,124

VICTORIA.

Total population	540,322
Born in Germany	10,418

SOUTH AUSTRALIA.

Total population	126,830
Born in Germany	8,863

It is stated that Germany affords 7 per cent. of the immigrants to this colony.

* * * * * * *

It is to be presumed that if treaties could be agreed upon which would be practicable in operation and acceptable to foreign nations, a corresponding alteration in the law, at all events of this country, would have to be made; and it must be a matter of consideration how such an alteration can be carried out, affecting, as it will do, the rights of property in the colonies as well as in England, and altering the whole system on which the hitherto received doctrine of British protection to British subjects resident abroad rests.

While it seems perfectly fair to expatriate a person who willfully severs his connection with his native country, care should be taken to make a distinction between persons residing temporarily abroad for commercial purposes, and compelled by local laws to take an oath of allegiance in order to carry on their trade or profession, as was formerly the case in Russia and Denmark, and persons permanently incorporating themselves and their interests in a foreign country.

Thus it would be a hardship on British merchants that a person who had taken out a burgher license to enable him to carry on a broker's agency in Denmark, should be thereby absolutely expatriated and disabled from inheriting real property in England.

Nor should a British subject be expatriated for having worn a red waistcoat at Buenos Ayres, (see Memorandum,) or resided two years in Colombia.

The merchant shipping act of 1854 provides that no person who has taken an oath of allegiance to a foreign sovereign shall be entitled to be registered as owner of a British merchant-vessel unless he shall have subsequently taken another oath of allegiance to the British Crown.

The principle of expatriation here recognized could not be carried out without some further provisions, as it will have been already seen that an oath of allegiance is not required for naturalization in France and other countries.

The simplest plan would be to provide that a British subject naturalizing himself in a foreign country should be deemed, from the time of his being so naturalized, to be a subject or citizen of that country. The advantage of making the act of expatriation depend upon the act of naturalization would be that a record of the fact would be preserved; whereas if the expatriation is made to depend also upon domicile (as in the Prussian treaty) the difficulties of subsequently proving such uninterrupted domicile would probably be almost insuperable.

The Prussian treaty likewise contains a provision for repatriation by domicile. In Prussia this may be of importance, as it would no doubt be inconvenient to allow naturalized Prussian-Americans to return to Prussia and to claim continued exemption from the military service to which all their neighbors would be exposed.

The new Italian code enables an expatriated citizen to recover his civil rights: 1. By returning to the realm with the special permission of the government. 2. By relinquishing foreign employment. 3. By declaring before the proper civil authority of the State an intention to re-establish his domicile within the realms, and by so *bona fide* establishing it within a year. The son of an expatriated Italian can also recover his nationality by making a similar declaration on coming of age, either before the authorities in Italy, or before any Italian diplomatic or consular agent abroad.

Having regard to the British law of alienship, particularly as respects the right to inherit real property, there might be great difficulty in making similar provisions for the repatriation of British expatriates, especially as there is no machinery in England or the colonies for local registration for police and conscription purposes as in Italy, Prussia, and France.

A careful consideration, therefore, of this intricate subject leads to the following conclusions:

1. That the time has arrived when the principle of free expatriation may be adopted, and even (in the interests of the colonies) advocated by Great Britain.

2. That such expatriation should depend on the expatriate being naturalized by some legal process in a foreign country, and not on domicile; care being taken that the interests of persons resident abroad and assuming local and temporary allegiance for mercantile purposes are not injuriously affected.

3. That an expatriate should become from the time of his alien naturalization absolutely an alien, subject both as regards himself and his children (whether minors at the time of his naturalization or born subsequent to it) to all the disabilities of alienship.

4. That repatriation should be effected in the same manner as naturalization, *i. e.*, the expatriate having become an alien should only recover the rights and privileges of a British subject by the same process as aliens are admitted to them.

(Signed) CHAS. S. A. ABBOTT.

FOREIGN OFFICE, *March* 19, 1868.

PART I.—BRITISH AND COLONIAL LAWS.

[*Since this report was made a new statute has been enacted by the imperial Parliament This matter is substituted for the matter respecting imperial legislation contained in the report.*]

AN ACT to amend the law relating to the legal condition of aliens and British subjects. [12th May, 1870.]

Whereas it is expedient to amend the law relating to the legal condition of aliens and British subjects:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as "The Naturalization Act, 1870."

2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description

may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject: *Provided*, (1.) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise: (2.) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him: (3.) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this act, or in pursuance of any devolution by law on the death of any person dying before the passing of this act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their *status* as such subjects, it shall be lawful for Her Majesty, by order in council, to declare that such convention has been entered into by Her Majesty; and from and after the date of such order in council, any person, being originally a subject or citizen of the state referred to in such order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged, as aforesaid.

A declaration of alienage may be made as follows; that is to say,—If the declarant be in the United Kingdom, in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became, under the law of any foreign state, a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

5. From and after the passing of this act, an alien shall not be entitled to be tried by a jury *de medietate linguæ*, but shall be triable in the same manner as if he were a natural-born subject.

EXPATRIATION.

6. Any British subject who has at any time before, or may at any time after the passing of this act, when in any foreign state and not under any disability, voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien; *Provided*, (1.) That where any British subject has, before the passing of this act, voluntarily become naturalized in a foreign state, and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this act, make a declaration that he is desirous of remaining a British subject, and upon such declaration, herein-after referred to as a declaration of British nationality, being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect: (2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows; that is to say—if the declarant be in the United Kingdom in the presence of a justice of the peace; if elsewhere in Her Majesty's dominions, in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions, in the presence of any officer in the diplomatic or consular service of Her Majesty.

NATURALIZATION AND RESUMPTION OF BRITISH NATIONALITY.

7. An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's principal secretaries of state, either by general order or on any special occasion, has resided in the United

Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's principal secretaries of state for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such secretary of state may require. The said secretary of state, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall, in the United Kingdom, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said secretary of state may, in manner aforesaid, grant a special certificate of naturalization to any person with respect to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this act may apply to the secretary of state for a certificate of naturalization under this act, and it shall be lawful for the said secretary of state to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

8. A natural-born British subject who has become an alien in pursuance of this act, and is in this act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's principal secretaries of state for a certificate herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said secretary of state shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previous transaction, resume his position as a British subject; with this qualification, that within the limits of the foreign state of which he became a subject, he shall not be deemed to be a British subject, unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this act conferred on the secretary of state in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

9. The oath in this act referred to as the oath of allegiance shall be in the form following; that is to say,

"I, ——— ———, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs, and successors, according to law. So help me God."

NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN.

10. The following enactments shall be made with respect to the national status of women and children: (1.) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject: (2.) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this act: (3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this act, every child of such father or mother who, during infancy, has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject: (4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British na-

tionality, every child of such father or mother who, during infancy, has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents: (5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who, during infancy, has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

SUPPLEMENTAL PROVISIONS.

11. One of Her Majesty's principal secretaries of state may, by regulation, provide for the following matters: (1.) The form and registration of declarations of British nationality: (2.) The form and registration of certificates of naturalization in the United Kingdom: (3.) The form and registration of certificates of re-admission to British nationality: (4.) The form and registration of declarations of alienage: (5.) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations: (6.) The transmission to the United Kingdom for the purpose of registration or safe-keeping, or of being produced as evidence, of any declarations or certificates made in pursuance of this act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this act: (7.) With the consent of the treasury the imposition and application of fees in respect of any registration authorized to be made by this act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this act.

The said secretary of state, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said secretary of state in pursuance of this section shall be deemed to be within the powers conferred by this act, and shall be of the same force as if it had been enacted in this act, but shall not, so far as respects the imposition of fees, be in force in any British possession, and shall not so far as respects any other matter be in force in any British possession in which any act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. The following regulations shall be made with respect to evidence under this this act: (1.) Any declaration authorized to be made under this act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state, or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned: (2.) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state, or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such certificate: (3.) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's principal secretaries of state, or by any person authorized by regulations of one of Her Majesty's principal secretaries of state to give certified copies of such certificate: (4.) Entries in any register authorized to be made in pursuance of this act shall be proved by such copies, and certified in such manner as may be directed by one of Her Majesty's principal secretaries of state, and the copies of such entries shall be evidence of any matters by this act or by any regulation of the said secretary of state authorized to be inserted in the register: (5.) The documentary-evidence act, 1868, shall apply to any regulation made by a secretary of state, in pursuance of, or for the purpose of carrying into effect any of the provisions of this act.

MISCELLANEOUS.

13. Nothing in this act contained shall affect the grant of letters of denization by Her Majesty.

14. Nothing in this act contained shall qualify an alien to be the owner of a British ship.

15. Where any British subject has in pursuance of this act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien.

16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to

be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession.

17. In this act, if not inconsistent with the context or subject-matter thereof:—"disability" shall mean the status of being an infant, lunatic, idiot, or married woman: "British possession" shall mean any colony, plantation, island, territory, or settlement within Her Majesty's dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this act: "The governor of any British possession" shall include any person exercising the chief authority in such possession: "Officer in the diplomatic service of Her Majesty:" shall mean any embassador, minister, or chargé d'affaires, or secretary of legation, or any person appointed by such embassador, minister, chargé d'affaires, or secretary of legation to execute any duties imposed by this act on an officer in the diplomatic service of Her Majesty. "Officer in the consular service of Her Majesty" shall mean and include consul-general, consul, vice-consul, and consular agent, and any person for the time being discharging the duties of consul-general, consul, vice-consul, and consular agent.

REPEAL OF ACTS MENTIONED IN SCHEDULE.

18. The several acts set forth in the first and second parts of the schedule annexed hereto shall be wholly repealed, and the acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned; *Provided*, That the repeal enacted in this act shall not affect—(1.) Any right acquired or thing done before the passing of this act: (2.) Any liability accruing before the passing of this act: (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offense committed before the passing of this act: (4.) The institution of any investigation or legal proceeding, or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the "whole act" where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous acts.

This schedule, so far as respects acts prior to the reign of George the Second, other than acts of the Irish Parliament, refers to the edition prepared under the direction of the record commission, intituled "The Statutes of the Realm; printed by command of His Majesty King George the Third, in pursuance of an address of the House of Commons of Great Britain. From original records and authentic manuscripts."

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

An act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy. (7 Jas. 1, c. 2.)

An act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens. (11 Will. 3, c. 6.[1])

An act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America. (13 Geo. 2, c. 7.)

An act to extend the provisions of an act made in the thirteenth year of his present Majesty's reign, intituled "An act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath." (20 Geo. 2, c. 44.)

An act to explain two acts of Parliament: one of the thirteenth year of the reign of his late Majesty, "for naturalizing such foreign Protestants and others as are settled or shall settle in any of His Majesty's colonies in America;" and the other of the second year of the reign of his present Majesty, "for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's royal American regiment, or as engineers in America." (13 Geo. 3, c. 25.)

An act to prevent certain inconveniences that may happen by bills of naturalization. (14 Geo. 3, c. 84.)

An act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens. (16 Geo. 3, c. 52.)

[1] 11 and 12 Wm. 3. (Ruff.)

An act to alter and amend an act passed in the seventh year of the reign of His Majesty King James the First, entitled "An act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy." (6 Geo. 4, c. 67.)

An act to amend the laws relating to aliens. (7 and 8 Vict., c. 66.)

An act for the naturalization of aliens. (10 and 11 Vict., c. 83.)

PART II.

ACTS OF THE IRISH PARLIAMENT WHOLLY REPEALED.

An act for encouraging Protestant strangers and others to inhabit and plant in the kingdom of Ireland. (14 and 15 Chas. 2, c. 13.)

An act for naturalizing of all Protestant strangers in this kingdom. (2 Anne, c. 14.)

An act for naturalizing such foreign merchants, traders, artificers, artisans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom. (19 and 20 Geo. 3, c. 29.)

An act for extending the provisions of an act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An act for naturalizing such foreign merchants, traders, artificers, artisans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom." (23 and 24 Geo. 3, c. 38.)

An act to explain and amend an act intituled "An act for naturalizing such foreign merchants, traders, artificers, artisans, manufacturers, workmen, seamen, farmers, and others who shall settle in this kingdom." (36 Geo. 3, c. 48.)

PART III.

ACTS PARTIALLY REPEALED.

An act for reviving, continuing, and amending several statutes made in this kingdom heretofore temporary. (4 Geo. 1, c. 9; act of Irish Parliament.) Extent of repeal: So far as it makes perpetual the act of 2 Anne, c. 14.

An act for consolidating and amending the laws relative to jurors and juries. (6 Geo. 4, c. 50.) Extent of repeal: The whole of sec. 47.

An act consolidating and amending the laws relating to jurors and juries in Ireland. (3 and 4 Will. 4, c. 91.) Extent of repeal: The whole of sec. 37.

COLONIAL NATURALIZATION.

Doubts having arisen whether the Act 7 and 8 Vict. c. 66, of 1844, extended to the colonies, an act was passed in 1847 (10 and 11 Vict., c. 83) declaring that it did not extend to the colonies, and that all laws, statutes, or ordinances duly passed or to be passed within Her Majesty's colonies or possessions abroad conferring the privileges of naturalization within the limits of such colonies were valid, subject to the usual confirmation by the Crown.

It may be interesting to notice the naturalization acts at present in force in the principal colonies.

ANTIGUA, GRENADA, ST. VINCENT.[1]

In Antigua, (Act No. 739, October, 1861,) Grenada, (Act No. 230, 1858,) and St. Vincent, (Act of October, 1857, sect. 17,) alien immigrants of African descent, arriving from the United States, or from the British North American colonies, who may have entered or may enter into a written contract of service for not less than a year, shall after three years' residence enjoy all the privileges of a natural-born subject upon taking the oath of allegiance before the governor, in the presence of the secretary to the government. This officer is to keep a register of the names, &c., of such naturalized immigrants, and the register, or an official extract is, upon proof of the identity of the immigrant, to be evidence of his rights.

BAHAMAS.[1]

By the colonial act, No. 11 Vict., cap. 4, passed 22d March, 1848, aliens become naturalized upon taking the oath of allegiance and obtaining a certificate from the governor in council under the great seal of the colony that the oath has been taken. The cer-

[1] Colonization Circular, No. 27, 1868, published by the Emigration Commissioners.

tificate is obtainable on presentation to the governor in council of a memorial setting forth full particulars respecting the memorialist and the grounds on which the privileges of naturalization are sought, and when obtained the certificate must be recorded in the office of the public secretary and registrar of records. The fees are to be regulated by the governor in council and to be paid into the public treasury.

BARBADOS, ST. VINCENT, ST. LUCIA, GRENADA.[1]

In Barbados, St. Vincent, St. Lucia, Grenada, and generally in the minor West Indian colonies, there is no general naturalization law, but special acts are required on each occasion.

BERMUDA.[1]

In this colony the rights of aliens and the steps to be taken for obtaining naturalization are prescribed by a colonial act, No. 11 of 1857. They are similar in their main features to those in force in New South Wales.

The time, however, within which the oath is to be taken is extended to three calendar months from the date of the certificate of naturalization. The oath is to be taken before the governor, and a memorandum of the fact indorsed on the certificate, which document is to be registered in the colonial secretary's office, and then enrolled in the court of the chancery.

BRITISH COLUMBIA.[1]

In this colony the privileges of aliens are at present regulated by a proclamation, dated 14th May, 1859, and issued by the governor, under the authority of the imperial act, 21 and 22 Vict., cap. 99, and of his commission. By this[2] proclamation aliens have the same capacity to hold and transmit landed and real estate of every description as natural-born British subjects, and after a residence of three years may demand naturalization on producing a declaration of residence and character from some British subject, on making himself a declaration of residence, and on taking the oath of allegiance. The latter declaration must be made and oath taken before a justice of the peace, who is to declare that he knows no reason why the applicant should not be naturalized. These conditions being fulfilled, the court of British Columbia is to record the proceedings, and the alien is then to be deemed a British subject for all purposes whatsoever while within the colony. The cost of this process is 18s. Aliens, wives of British subjects, are to be deemed to be naturalized.

The naturalization may be annulled (in addition to the penalties for perjury) if any party to either of the above declarations is convicted of perjury therein.

BRITISH GUIANA.

In this colony there is no general act for naturalization. A special ordinance is therefore passed on each occasion, authorizing the governor to issue letters-patent, granting to the alien the rights and capacities of naturalization.

The letters-patent must be recorded in the registrar's office of the counties of Demerara and Essequibo, and within ten days from their date the alien must take and subscribe the oath of allegiance before a judge of the supreme court, and a certificate thereof is issued by the registrar of the court, whose certificate is to be received as sufficient evidence of the fact.

These ordinances are reserved for Her Majesty's pleasure, and do not take effect until the same has been notified in the official gazette of the colony.

CANADA.

Naturalization act, 22 Vict., c. 8, 1859:

Section 1. "Every alien residing in any part of this province before or since 18th January, 1849, with intent to settle therein, and who, after a continued residence of three years or upwards, has taken the oaths or affirmations of residence and allegiance, shall thenceforth enjoy and transmit all the rights and capacities which a natural-born subject of Her Majesty can enjoy and transmit."

OATH OF RESIDENCE.

Section 2. "I, A. B., do swear that I have resided three years in this province with intent to settle therein, without having been, during that time, a stated resident in any foreign country. So help me GOD."

The oath of allegiance is the same as in the English act of 1844.

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[1] Colonization Circular, No. 27, 1868, published by the Emigration Commissioners. [2] Parliamentary papers on British Columbia, Part 3, 1860.

These oaths are to be taken before the justices of the peace at quarter sessions, or before the recorder, and a certificate is to be at the same time produced, signed, if practicable, by a magistrate, testifying to the truth of the statement as to residence.

Thereupon the clerk of the court is to issue a certificate, stating that "under and by virtue of the said act, the said A. B. hath obtained all the rights and capacities of a natural born British subject within this province."

Section 7. Any woman married to a natural-born British subject, or person naturalized under the authority of this act, to be deemed naturalized, and have all the rights and privileges of a British subject.[1]

Section 10. The rights to be enjoyed under this act to be subject to the conditions and limited to the province, as provided by the act of the Imperial Parliament.

There are no disabling clauses.

CAPE OF GOOD HOPE.[2]

By a proclamation issued on the 2d day of May, 1817, by the then governor-general, Lord Charles Henry Somerset, deeds of burghership, subject to the approbation of the Crown, can be granted to all foreigners and aliens of good character and conduct applying for the same, provided they shall have resided for the last five successive years within the settlement, and upon their taking the usual oths of allegiance, and paying the usual fees for the deed of burghership in addition to a stamp of 18*l.* 15*s.*

By an act, No. 8, of 1856, all former laws, customs, or usages inconsistent with the act are repealed, and from its promulgation (4th June, 1856,) aliens may purchase, acquire, and own fixed property in the colony, in like manner as natural-born subjects. But beyond this nothing in the act is to be taken as naturalizing any aliens or bestowing upon them any of the privileges conferred by deeds of burghership.

By an act, No. 37, of 1861, the governor is empowered to grant letters of naturalization to any alien of full age and good character, and able to read and understand some European language, and to write his name, provided he has been resident in the colony five years, or is married to a natural-born British subject, or possesses unencumbered landed property in the colony of not less value than 300*l.*

This act also provides that naturalization elsewhere within British dominion shall hold good at the Cape.

The fee for these letters of naturalization is fixed at 20*l.*

HONDURAS.[2]

The naturalization act for this colony, 18 Vict., cap. 18, was proclaimed 19th July, 1855. It is similar to the New South Wales act. By the 23d section immigration act, 24 Vict., cap. 5, passed in 1861, every immigrant born out of the British dominions who shall have obtained or become entitled to a certificate of industrial residence, shall immediately thereafter become entitled to all such privileges as are conferred by the act 18 Vict., cap. 18, on naturalized aliens, except the capability to become a member of assembly, which privilege, however, may be allowed by the superintendent.

HONG-KONG.[2]

By the colonial ordinance, No. 2, of 1853, passed on the 17th November of that year aliens, though not naturalized, may acquire and dispose of real estate within the colony as effectually as natural-born subjects. The ordinance confers no other rights on aliens.

JAMAICA.[3]

The governor may by instrument under the broad seal make any alien or foreigner coming to settle and plant in the island, having first taken the oath of allegiance, to be completely naturalized, and the persons named to enjoy the same immunities and rights to the laws of this island as natural-born subjects.

The statute 13 Geo. II, c. 7, naturalizing foreign Protestants and others settling in the colonies, to be in full force and operation.

The alien disabled from being a member of the council or assembly.

The provisions, &c., as to the rights of aliens, enacted by the English act of 1844, made applicable to Jamaica by 14 Vict., c. 40., 1851.

By another act, 22 Vict., cap. 1. (Nov., 1858,)[2] every "immigrant" born out of the British dominions, who may obtain or become entitled to a "certificate of industrial

[1] This clause, which is the same as the 16th section of the English act, is repeated in all the colonial acts. [2] Colonization Circular, 1868. [3] Digest of laws of Jamaica, by the attorney-general of Jamaica, Ed. 1865, p. 5.

residence" under the act, thereby becomes entitled to all the privileges of a natural-born subject within the island. An immigrant is defined to be any person introduced at the public expense from certain specified places.

NATAL.[1]

Under the law No. 1, of 1860, the lieutenant-governor is authorized and empowered to grant, under the public seal of the colony, letters of naturalization to any alien who shall have attained the full age of 21 years, and who shall be able to read and understand one or more of the languages of Europe, and to write his name, and shall have presented to the said governor a memorial praying to be naturalized; and every such alien, prior to obtaining such letters of naturalization, shall pay into the treasury of the colony a sum of five pounds sterling.

No alien shall (except as in the next succeeding section is excepted) be capable of receiving letters of naturalization unless he shall have been a resident within the colony during the five years immediately preceding the presentation of his memorial praying to be naturalized.

Any alien who shall be married to a natural-born subject of Her Majesty the Queen, or who, being married to an alien, shall have had by his said wife, during their marriage and residence within the colony, not less than three children, and any alien who shall be the owner of landed property within the colony, and registered in his name, of not less a value than 300*l.*, over and above all special conventional mortgages affecting the same, shall be capable of obtaining letters of naturalization, although he shall not have resided in the colony for five years.

No letters of naturalization shall be granted to any alien who is an uncertificated insolvent, or of unsound mind, or has been convicted and sentenced for treason, murder, rape, theft, fraud, perjury, forgery, or any other infamous crime.

When such letters of naturalization shall have been obtained by any alien he shall be bound to take the oath of allegiance to Her Majesty the Queen.

Any alien woman already married or who shall be hereafter married to a natural-born subject or person naturalized under this or any other law, shall be deemed and taken to be herself naturalized. All minor children, alien born, of any alien parent, who shall himself or herself be naturalized under this or any other law, and which children shall be within the colony at the time of the naturalization of their parent, shall be themselves naturalized *ipso facto* by such naturalization.

NEW BRUNSWICK.[1]

The colonial act, 24 Vict., c. 24, April 1861, required one year's residence and an oath of allegiance. By the Dominion Consolidation[2] act, however, (cap. 66, 1868,) the process of naturalization in New Brunswick has been assimilated to that previously in force in Canada. (See Canada.)

NEWFOUNDLAND.

By a colonial act, 19 Vict., cap. 20, passed on the 12th May, 1856, the governor may, by letters-patent under the great seal of the colony, naturalize any alien resident therein.

Within ten days thereafter the alien must take and subscribe in duplicate, before a judge of the supreme court, the oath of allegiance, one copy of which is to be filed in the registry of the court, and the other in the office of the government secretary. The alien is then entitled to all the privileges and subject to all the liabilities of a natural-born subject.

The judge shall, if required, certify on the letters of naturalization that the oath has been taken, which certificate shall be evidence of its contents.

NEW SOUTH WALES.[3]

(11 Vict., No. 39, 1848.)

The same as the English act of 1844, *mutatis mutandis*.

The governor to grant the certificates.

Section 4 disables from being a member of the executive or legislative councils.

The rights and capacities conferred by the certificate limited to "within the said colony."

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[1] Colonization Circular, 1868. [2] Dominion act c. 66, 1868. [3] Callagham's Statutes of New South Wales, vol. ii, p. 1830.

Naturalized aliens who sha have resided in the colony for three years, being otherwise qualified, are entitled to vote at elections, and, after five years' residence, to be elected members of the assembly.

NEW ZEALAND.[1]

The colonial act (30 Vict. No. 17, 1866) is the same as the English act, *mutatis mutandis*, with the following additional provisions:

Persons resident in the colony who have been naturalized in the United Kingdom, or in any British colony on the continents of Australia, (including Tasmania,) Africa, or America, may, if the governor thinks fit, be naturalized in New Zealand on exhibiting the certificate of naturalization and stating in their memorials that such certificate has been obtained without fraud or intentional false statement, and that the signature and seal, if any, thereto are genuine.

The colonial secretary is to enroll all letters of naturalization and a certified copy of every such certificate, and shall be entitled to a fee of 1*l.* from every person to whom the letters are granted, and shall cause indices to be made to such letters and certificates, which shall be open for inspection or copying on payment of a fee of 1*s.* for each inspection.

The penalty for false statements in the memorial is the avoidance of the letters of naturalization (except against *bona-fide* purchasers for valuable consideration) in addition to the penalties of perjury. All pre-existing rights are saved, whether of aliens or natural-born subjects.

NOVA SCOTIA.[2]

After one year's residence, and on taking the oath of allegiance, the alien was entitled to all the rights and privileges of a British subject within the province, under the colonial act of 1858, (Title 8, c. 43.)

By the Dominion act, however, (c. 66, 1868,) the Canadian naturalization law was extended to Nova Scotia. (See Canada.)

PRINCE EDWARD ISLAND.[3]

(Naturalization law, April 17, 1862.)

After seven years' residence, and on taking the following oath, the alien is entitled to "all the privileges of a natural-born subject of Her Majesty:"

OATH.

"I, A. B., of ———, do swear that I have resided seven years in this island, without having during that time been a stated resident in any foreign country, and that I will be faithful and bear true allegiance to the sovereign of Great Britain and Ireland, and of this island as dependent thereon. So help me God."

It is somewhat remarkable that the period of seven years required by the act of Geo. 2, and which the Americans complained against as excessive in the Declaration of Independence, should be purposely retained to this day in Prince Edward Island.

QUEENSLAND.[4]

A colonial act passed in 1867 contains the same clauses as the English act with regard to the possession of leasehold property by aliens and the rights of aliens descended from British mothers, with the following additional provisions:

1. Any alien, native of a friendly European or North American state, can become naturalized on taking an oath of allegiance.

2. No Asiatic or African alien to be naturalized unless he has resided in the colonies for three years, and is married, and his wife resident in the colonies at the time of his naturalization.

Asiatic and African aliens only to be naturalized on obtaining a certificate from the governor, subject to such reservations as he may thing fit to insert in such certificate.

Such aliens disqualified from being members of the executive or legislative council, or legislative assembly.

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[1] Colonization Circular, 1868. [2] Revised Statutes of Nova Scotia, 2nd series, p. 153. [3] Laws of Prince Edward Island, vol. ii. p. 567. [4] Queensland Act, 31 Vict., December 28 ,1867.

OATH OF ALLEGIANCE.

"I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria as lawful sovereign of the United Kingdom of Great Britain and Ireland and of the colony of Queensland, dependent and belonging to the said United Kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against her person, crown, and dignity; and that I will do my utmost endeavor to make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against her or any of them. So help me God."

The fees under this act are remarkably small, viz: oath, 1*s.*; filing record, 1*s.*; certificate, 2*s.* 6*d.*; so that any white alien can be naturalized for 4*s.* 6*d.*

ST. KITTS AND ANGUILA.[1]

By a local act, No. 127, passed on the 3d February, 1857, all domiciled or resident liberated Africans are to be deemed to be natural-born subjects, and capable of holding and conveying real and personal estate. The children, wherever born, of a mother a natural-born subject are made capable of taking real or personal estate by purchase or descent; and wives of natural-born or naturalized subjects are to be deemed to be naturalized.

Aliens, subjects of a friendly state, may acquire and hold either real or personal estate as effectually as natural-born subjects, but they are not thereby made capable of becoming members of the council or of the assembly, nor of voting at the election of members of the assembly.

SIERRA LEONE.[1]

By the imperial act, 16 and 17 Vict., cap. 86, (20 Aug., 1853,) liberated Africans domiciled or resident in Sierra Leone are to be deemed within the colony to be natural-born subjects as from the date of their arrival, and to be capable of holding and transmitting any estate, real or personal, within the colony. Power is given to the local legislature to alter or repeal any of the provisions of the act so far as they relate to the right to real property. Liberated Africans are also to be considered as British subjects for the purposes of treaties with native chiefs.

SOUTH AUSTRALIA.[1]

By the colonial amending and consolidating act, No. 5, of 1864, every person born of a mother who is a natural-born or naturalized subject is capable of holding real or personal estate.

Friendly aliens may hold every description of property whether real or personal.

A certificate of naturalization may be applied for by any alien, and upon receipt of such application, countersigned by a justice of the peace, the governor, if he think fit, shall direct the applicant to take the oath of allegiance before one of the judges of the superior court, and, on such oath being taken, he shall issue letters of naturalization. The fee for obtaining the certificate in duplicate is 1*l.* 1*s.*

The effect of this certificate is to vest all the rights and privileges of a natural-born British subject in such naturalized alien.

A subsequent act, 23 and 24 Vict., No. 20, provides that aliens who obtain certificates of naturalization in any British colony or possession may obtain the privileges of naturalization in South Australia on lodging with the registrar-general of the colony their original certificates of naturalization together with a true copy thereof. The original is then returned with an indorsement that the alien had made the declaration and taken the oath of allegiance prescribed by the act.

The fee for this process is fixed at 10*s.* 6*d.*

TASMANIA.[1]

By a colonial act, 25 Vict., No. 2, passed in November, 1861, repealing 5 Will. 4, No. 4, the governor in council is empowered, on the presentation of a memorial, stating particulars, to issue a certificate granting all the rights and capacities of a natural-born British subject within the colony, such certificate to be enrolled in the supreme court, and an oath of allegiance to be taken before a judge or commissioner of the supreme

[1] Colonization Circular, 1868.

court, (within 60 days from the date of the certificate,) who will grant a certificate of the taking and subscribing the oath. The cost of the whole process is 6*s*.

TRINIDAD.[1]

In this island a special ordinance of naturalization is required on each occasion, to obtain which the alien must present a petition to the governor. When the ordinance has been passed, and the alien has taken the oath of allegiance before the governor, he becomes entitled, within the limits of the colony, to all the privileges of a natural-born subject.

The taking of the oath is to be immediately certified by the governor, and the certificate is to be recorded in the registrar-general's office.

These ordinances are reserved for Her Majesty's pleasure, and do not take effect until it has been signified.

TURK'S ISLAND AND CAICOS ISLAND.[1]

By the colonial act, No. 1, Vict., c. 4, passed 22d March, 1848, aliens become naturalized upon taking the oath of allegiance and obtaining a certificate from the president in council, under the great seal of the colony, that the oath has been taken. The certificate is obtainable on presentation to the president of a memorial setting forth the grounds on which the privileges of naturalization are sought, and when obtained it must be recorded in the office of the public secretary and registrar of records. The fees are to be regulated by the president in council.

By ordinance No. 8, of 1857, (passed 17th October, 1857, and confirmed 13th February, 1858,) aliens may hold lands, salt ponds, &c., (except salt ponds at Turk's Island,) on lease not exceeding 21 years, which lease may be renewed at the end of the term.

VICTORIA.[1]

The colonial act, 28 Vict., No. 256, which came into operation on the 1st of June, 1865, and is called "The Alien's Statute, 1865," repeals the previous acts, 24 Vict., No. 112, and 26 Vict., No. 166. It provides that alien friends resident in the colony may inherit, acquire, hold, and dispose of every description of property, whether real or personal, in the same manner as natural-born subjects of the Crown; and all dispositions made before the passing of this act to or by such aliens are declared to be valid. The governor may, if he thinks fit, grant under the seal of the colony letters of naturalization to resident alien friends, provided they be of good repute and take the oath of allegiance to the British Crown. But they are rendered incapable of being members of the legislative council and the legislative assembly.

To obtain naturalization, the alien is to present a memorial to the governor, signed by himself, and verified on oath, stating his name, age, birthplace, occupation, length of his residence in the colony, and his desire to settle therein. The memorial must be accompanied by a certificate, signed by a warden, police magistrate, or justice of the peace, that the applicant is known to him, and is a person of good repute.

If the application be favorably entertained, the alien must take the oath of allegiance before a judge of the supreme court, or of a county court, or court of mines, or police magistrate, and, on production of a certificate from the judge or magistrate to that effect, the governor in council issues the letters of naturalization; they, and a certified copy of the certificate, are then to be recorded by the chief secretary, for which a fee of 1*l*. is to be paid.

The penalty for false statements in the memorial is the avoidance of the letters of naturalization (except against purchasers for valuable considerations) superadded to the penalties of perjury.

The alien wives of natural-born or naturalized subjects are to be deemed naturalized.

Persons resident in Victoria who have been naturalized in the United Kingdom, or in any British colony in Australia, (including Tasmania and New Zealand,) Africa, or America, may, if the governor thinks fit, be naturalized in Victoria on exhibiting the certificate of naturalization, and stating in their memorials that such certificate has been obtained without fraud or intentional false statement, and that the signature and seal, if any thereto, are, to the best of their belief, genuine.

WESTERN AUSTRALIA.[1]

Aliens can become naturalized by local ordinance, which is introduced on their own application, and on payment of 5*l*. for expenses of preparing the bill. The ordinance does not become law until it has received the confirmation of the Crown.

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[1] Colonization Circular, 1868.

Naturalized aliens may hold lands and enjoy all the rights within the colony of a natural-born subject, except the right of holding any place or office of trust in the courts of law or connected with the treasury.

PART II.—LAWS OF THE UNITED STATES.

[*For the summaries of the laws and discussions on this subject which were in the appendix to the Commissioner's Report it has been thought best to substitute the statutes themselves; an explanation of the provisions of the various treaties with other powers; and a copy of theinstructions to consuls on the subject of protection and passports.*]

A.—*Report of the Examiner of Claims upon the provisions of the statutes and Constitution respecting naturalization and expatriation.*

BUREAU OF CLAIMS, *November* 4, 1873.

SIR: In this compilation of the laws on the subject of naturalization and expatriation all acts and parts of acts which have been repealed, or that have become obsolete either by time or by the circumstances which gave rise to their enactment, having ceased to exist, are omitted.

The last two provisos of Section I, act of 14th of April, 1802, are obsolete, and section II is repealed by the first section of act of May 24, 1828, which latter act is also omitted as obsolete. The act of March 22, 1816, is omitted, the first section being repealed by section I of act of May 24, 1828, and the second section being obsolete.

Section XIII of the act of March 3, 1813, providing penalty for forging certificates of naturalization, is omitted, as being repealed by implication by the act of July 14, 1870.

HENRY O'CONNOR.

Hon. HAMILTON FISH,
Secretary of State.

NATURALIZATION LAWS.

AN ACT to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

First. That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the States or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was, *bona fide,* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof such alien may, at the time, be a citizen or subject.

Secondly. That he shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the State or Territory where

such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time he has behaved as a man of a good moral character, attached to the principles of the Constitution of the United States, and well-disposed to the good order and happiness of the same: *Provided*, That the oath of the applicant shall in no case be allowed to prove his residence.

Fourthly. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made; which renunciation shall be recorded in the said court: *Provided*, That no alien who shall be a native citizen, denizen, or subject of any country, state, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 3. And whereas doubts have arisen whether certain courts of record in some of the States are included within the description of district or circuit courts: *Be it further enacted*, That every court of record in any individual State having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court shall enjoy, from and after the passing of the act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

SEC. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided also*, That no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the late war, shall be admitted a citizen as aforesaid without the consent of the legislature of the State in which such person was proscribed.

SEC. 5. *And be it further enacted*, That all acts heretofore passed respecting naturalization be, and the same are hereby, repealed.

Approved April 14, 1802.

AN ACT in addition to an act entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

SEC. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Approved March 26, 1804.

AN ACT for the regulation of seamen on board the public and private vessels of the United States.

SEC. 12. *And be it further enacted*, That no person who shall arrive in the United States from and after the time when this act shall take effect, shall be admitted to become a citizen of the United States, who shall not for the continued term of five years next preceding his admission as aforesaid have resided within the United States, without being at any time during the said five years out of the territory of the United States.

Approved March 3, 1813.

AN ACT in further addition to "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided

five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the first condition of the first section of the act to which this is an addition, three years previous to his admission: *Provided*, Such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove, to the satisfaction of the court, that for three years next preceding it has been the *bona-fide* intention of such alien to become a citizen of the United States, and shall in all other respects comply with the laws in regard to naturalization.

SEC. 2. *And be further enacted*, That no certificates of citizenship or naturalization heretofore obtained from any court of record within the United States shall be deemed invalid in consequence of an omission to comply with the requisition of the first section of the act entitled "An act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

SEC. 3. *And be it further enacted*, That the declaration required by the first condition specified in the first section of the act to which this is an addition, shall, if the same has been *bona fide* made before the clerk of either of the courts in the said condition named, be as valid as if it had been made before the said courts respectively.

SEC. 4. *And be it further enacted*, That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition, anything in the said act, or in any subsequent act, to the contrary notwithstanding.

Approved May 26, 1824.

AN ACT to amend the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," passed the third of March, eighteen hundred and thirteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last clause of the twelfth section of the act hereby amended, consisting of the following words, to wit, "without being at any time during the said five years out of the territory of the United States," be, and the same is hereby, repealed.

Approved June 26, 1848.

AN ACT to secure the right of citizenship to children of citizens of the United States born out of the limits thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States: *Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States.

SEC. 2. *And be it further enacted*, That any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

Approved February 10, 1855.

Second Session, Thirty-seventh Congress, chap. 200.

SECTION 21. *And be it further enacted*, That any alien of the age of twenty-one years and upwards, who has enlisted or shall enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

Approved July 17, 1862.

Article XIV of the Constitution of the United States adopted July 28, 1868.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AN ACT to amend the naturalization laws and to punish crimes against the same and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any oath, affirmation, or affidavit shall be made or taken under or by virtue of any act or law relating to the naturalization of aliens, or in any proceedings under such acts or laws, and any person or persons taking or making such oath, affirmation, or affidavit, shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall upon conviction thereof be sentenced to imprisonment for a term not exceeding five years and not less than one year, and to a fine not exceeding one thousand dollars.

SEC. 2. *And be it further enacted*, That if any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge, or counterfeit any oath, affirmation, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law or act relating to or providing for the naturalization of aliens; or shall utter, sell, dispose of, or use as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper, or proceeding as aforesaid; or sell or dispose of to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or if any person shall obtain, accept, or receive any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the court. And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise, or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party guilty of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal.

SEC. 3. *And be it further enacted*, That any person who shall knowingly use any certificate of naturalization heretofore granted by any court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence or

has been or shall be issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the court taking cognizance of the same.

And be it further enacted, That the provision of this act shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization shall be commenced, had, or taken, or attempted to be commenced; and the courts of the United States shall have jurisdiction of all offenses under the provisions of this act, in or before whatsoever court or tribunal the same shall have been committed.

Approved July 14, 1873.

AN ACT to authorize the appointment of shipping-commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen.

SEC. 29. That every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant ship or ships of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and shall have served said three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant ship of the United States, anything to the contrary in any previous act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Approved June 7, 1872.

EXPATRIATION.

AN ACT concerning the rights of American citizens in foreign states.

Whereas the right of expatriation is a natural and inherit right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendents, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this Government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government.

SEC. 2. *And be it further enacted*, That all naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this Government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

SEC. 3. *And be it further enacted*, That whenever it shall be made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

Approved July 27, 1868.

B.—*Opinion of the Supreme Court of the United States, delivered at the December term, 1872, in "The Butchers' Benevolent Association of New Orleans, plaintiff in error, vs. The Crescent City Live-Stock Landing and Slaughter-House Company," and other cases commonly called "The Slaughter-House Cases."*

Mr. Justice MILLER delivered the opinion of the Court:

These cases are brought here by writs of error to the supreme court of the State of Louisiana.

They arise out of the efforts of the butchers of New Orleans to resist the Crescent City Live-Stock Landing and Slaughter-House Company in the exercise of certain powers conferred by the charter which created it, and which was granted by the legislature of that State.

The cases named above, with others which have been brought here and dismissed by agreement, were all decided by the supreme court of Louisiana in favor of the Slaughter-House Company, as we shall hereafter call it for the sake of brevity, and these writs are brought to reverse those decisions.

The records were filed in this court in 1870, and were argued before it at length on a motion made by plaintiffs in error for an order in the nature of an injunction or supersedeas, pending the action of the court on the merits. The opinion on that motion is reported in 10 Wallace, 273.

On account of the importance of the questions involved in these cases they were, by permission of the court, taken up out of their order on the docket and argued in January, 1872. At that hearing one of the justices was absent, and it was found, on consultation, that there was a diversity of views among those who were present. Impressed with the gravity of the questions raised in the argument, the court under these circumstances ordered that the cases be placed on the calendar and re-argued before a full bench. This argument was had early in February last.

Preliminary to the consideration of those questions is a motion by the defendant to dismiss the cases, on the ground that the contest between the parties has been adjusted by an agreement made since the records came into this court, and that part of that agreement is that these writs should be dismissed. This motion was heard with the argument on the merits, and was much pressed by counsel. It is supported by affidavits and by copies of the written agreement relied on. It is sufficient to say of these that we do not find in them satisfactory evidence that the agreement is binding upon all the parties to the record who are named as plaintiffs in the several writs of error, and that there are parties now before the court, in each of the three cases at the head of this opinion, who have not consented to their dismissal, and who are not bound by the action of those who have so consented. They have a right to be heard and the motion to dismiss cannot prevail.

The records show that the plaintiffs in error relied upon, and asserted throughout the entire course of the litigation in the State courts, that the grant of privileges in the charter of defendant, which they were contesting, was a violation of the most important provisions of the thirteenth and fourteenth articles of amendment of the Constitution of the United States. The jurisdiction and the duty of this court to review the judgment of the State court on those questions is clear and is imperative.

* * * * * * *

The institution of African slavery, as it existed in about half the States of the Union, and the contests pervading the public mind for many years, between those who desired its curtailment and ultimate extinction and those who desired additional safeguards for its security and perpetuation, culminated in the effort, on the part of most of the States in which slavery existed, to separate from the Federal Government, and to resist its authority. This constituted the war of the rebellion, and whatever auxiliary causes may have contributed to bring about this war, undoubtedly the overshadowing and efficient cause was African slavery.

In that struggle slavery, as a legalized social relation, perished. It perished as a necessity of the bitterness and force of the conflict. When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims whose enforced servitude was the foundation of the quarrel. And when hard pressed in the contest these men (for they proved themselves men in that terrible crisis) offered their services and were accepted by thousands to aid in suppressing the unlawful rebellion, slavery was at an end wherever the Federal Government succeeded in that purpose. The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, when he declared slavery abolished in them all. But the war being over, those who had succeeded in re-establishing the authority of the Federal Government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation of the Executive, both of which might have been questioned in after times, and they determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the thirteenth article of amendment of that instrument. Its two short sections seem hardly to admit of

construction, so vigorous is their expression and so appropriate to the purpose we have indicated:

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

To withdraw the mind from the contemplation of this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this Government—a declaration designed to establish the freedom of four millions of slaves—and with a microscopic search endeavor to find in it a reference to servitudes which may have been attached to property in certain localities, requires an effort, to say the least of it.

That a personal servitude was meant is proved by the use of the word "involuntary," which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word "servitude" is of larger meaning than "slavery," as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that in the form of apprenticeship for long terms, as it had been practiced in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word "slavery" had been used. The case of the apprentice slave, held under a law of Maryland, liberated by Chief Justice Chase, on a writ of *habeas corpus* under this article, illustrates this course of observation. (Matter of Turner, 1 Abbott U. S. R., 84.) And it is all that we deem necessary to say on the application of that article to the statute of Louisiana, now under consideration.

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The first section of the fourteenth article, to which our attention is more specially invited, opens with a definition of citizenship—not only citizenship of the United States, but citizenship of the States. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the Executive Departments, and in the public journals. It had been said by eminent judges that no man was a citizen of the United States, except as he was a citizen of one of the States composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens. Whether this proposition was sound or not, had never been judicially decided. But it had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen, were still, not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution.

To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States, and also citizenship of a State, the first clause of the first section was framed:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The first observation we have to make on this clause is, that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase, "subject to its jurisdiction" was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states born within the United States.

The next observation is more important in view of the arguments of counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a State is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a State, but an important element is necessary to convert the former into the latter. He must reside within the State to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think these distinctions and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.

The language is, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of *the United States.*" It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word "citizen of the State" should be left out when it is so carefully used, and used in contradistinction to "citizens of the United States," in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the citizen of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment.

If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the State as such, the latter must rest for their security and protection where they have heretofore rested, for they are not embraced by this paragraph of the amendment.

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But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws.

One of these is well described in the case of Crandall *vs.* Nevada, 6 Wallace, 36. It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, "to come to the seat of Government to *assert* any claim he may have upon that Government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its sea-ports, through which all operations of foreign commerce are conducted, to the sub-treasuries, land-offices, and courts of justice in the several States." And quoting from the language of Chief Justice Taney in another case, it is said "*That for all the great purposes for which the Federal Government* was established, we are one people, with one common country; *we are all citizens of the United States*;" and it is as such citizens that their rights are supported in this court in Crandall *vs.* Nevada.

Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of *habeas corpus*, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations are dependent upon citizenship of the United States and not citizenship of a State. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a *bona-fide* residence therein, with the same rights as other citizens of that State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth, next to be considered.

But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the fourteenth amendment under consideration.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws."

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The judgments of the supreme court of Louisiana in these cases are affirmed.

Mr. Justice FIELD, dissenting:

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The provisions of the fourteenth amendment, which is properly a supplement to the

thirteenth, cover, in my judgment, the case before us, and inhibit any legislation which confers special and exclusive privileges like these under consideration. The amendment was adopted to obviate objections which had been raised and pressed with great force to the validity of the civil-rights act, and to place the common rights of American citizens under the protection of the National Government. It first declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." It then declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The first clause of this amendment determines who are citizens of the United States and how their citizenship is created. Before its enactment there was much diversity of opinion among jurists and statesmen whether there was any such citizenship independent of that of the State, and, if any existed, as to the manner in which it originated. With the greater number the opinion prevailed that there was no such citizenship independent of the citizenship of the State. Such was the opinion of Mr. Calhoun and the class represented by him. In his celebrated speech in the Senate upon the force bill, in 1833, referring to the reliance expressed by a senator upon the fact that we are citizens of the United States, he said: "If by citizen of the United States he means a citizen at large, one whose citizenship extends to the entire geographical limits of the country without having a local citizenship in some State or Territory, a sort of citizen of the world, all that I have to say is that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some State or Territory, and as such, under an express provision of the Constitution, is entitled to all the privileges and immunities of citizens of the several States; and it is in this and no other sense we are citizens of the United States."

In the Dred Scott case this subject of citizenship of the United States was fully and elaborately discussed. The exposition in the opinion of Mr. Justice Curtis has been generally accepted by the profession of the country as the one containing the soundest views of constitutional law. And he held that, under the Constitution, citizenship of the United States in reference to natives was dependent upon citizenship in the several States, under their constitution and laws.

The Chief Justice, in that case, and a majority of the court with him, held that the words "people of the United States" and "citizens of the United States" were synonymous terms; that the people of the respective States were the parties to the Constitution; that these people consisted of the free inhabitants of those States; that they had provided in their Constitution for the adoption of a uniform rule of naturalization; that their descendants and persons naturalized were the only persons who could be citizens of the United States, and that it was not in the power of any State to invest any other person with citizenship so that he could enjoy the privileges of a citizen under the Constitution, and that therefore the descendants of persons brought to this country and sold as slaves were not, and could not be, citizens within the meaning of the Constitution.

The first clause of the fourteenth amendment changes this whole subject, and removes it from the region of discussion and doubt. It recognizes in express terms, if it does not create, citizens of the United States, and it makes their citizenship dependent upon the place of their birth, or the fact of their adoption, and not upon the constitution or laws of any State or the condition of their ancestry. A citizen of a State is now only a citizen of the United States residing in that State. The fundamental rights, privileges, and immunities which belong to him as a free man and a free citizen now belong to him as a citizen of the United States, and are not dependent upon his citizenship of any State. The exercise of these rights and privileges, and the degree of enjoyment received from such exercise, are always more or less affected by the condition and the local institutions of the State, or city, or town where he resides. They are thus affected in a State by the wisdom of its laws, the ability of its officers, the efficiency of its magistrates, the education and morals of its people, and by many other considerations. This is a result which follows from the constitution of society, and can never be avoided, but in no other way can they be affected by the action of the State, or by the residence of the citizen therein. They do not derive their existence from its legislation, and cannot be destroyed by its power.

The amendment does not attempt to confer any new privileges or immunities upon citizens, or to enumerate or define those already existing. It assumes that there are such privileges and immunities which belong of right to citizens as such, and ordains that they shall not be abridged by State legislation. If this inhibition has no reference to privileges and immunities of this character, but only refers, as stated by the majority in the court in their opinion, to such privileges and immunities as were before its adoption specially designated in the Constitution or necessarily implied as belong-

ing to citizens of the United States, it was a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage. With privileges and immunities thus designated, no State could ever have interfered by its laws, and no new constitutional provision was required to inhibit such interference. The supremacy of the Constitution and the laws of the United States always controlled any State legislation of that character. But, if the amendment refers to the natural and inalienable rights which belong to all citizens, the inhibition has a profound significance and consequence.

What, then, are the privileges and immunities which are secured against abridgment by State legislation?

In the first section of the civil-rights act, Congress has given its interpretation to these terms, or at least has stated some of the rights which, in its judgment, these terms include; it has there declared that they include the right "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property." That act, it is true, was passed before the fourteenth amendment, but the amendment was adopted, as I have already bid, to obviate objections to the act, or, speaking more accurately, I should say, to obviate objections to legislation of a similar character extending the protection of the National Government over the common rights of all citizens of the United States. Accordingly, after its ratification, Congress re-enacted the act under the belief that, whatever doubts may have previously existed of its validity, they were removed by the amendment.[1]

The terms, privileges, and immunities, are not new in the amendment; they were in the Constitution before the amendment was adopted. They are found in the second section of the fourth article, which declares that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," and they have been the subject of frequent consideration in judicial decisions. In Corfield *vs.* Coryell,[2] Mr. Justice Washington said he had "no hesitation in confining these expressions to those privileges and immunities which were, in their nature, fundamental; which belong of right to citizens of all free governments, and which have at all times been enjoyed by the citizens of the several States which compose the Union from the time of their becoming free, independent, and sovereign;" and, in considering what those fundamental privileges were, he said that perhaps it would be more tedious than difficult to enumerate them, but that they might be "all comprehended under the following general heads: Protection by the Government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the Government may justly prescribe for the general good of the whole." This appears to me to be a sound construction of the clause in question. The privileges and immunities designated are those *which of right belong to the citizens of all free governments.* Clearly among these must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons. In the discussions in Congress upon the passage of the civil-rights act, repeated reference was made to this language of Mr. Justice Washington. It was cited by Senator Trumbull with the observation that it enumerated the very rights belonging to a citizen of the United States set forth in the first section of the act, and with the statement that all persons born in the United States, being declared by the act citizens of the United States, would thenceforth be entitled to the rights of citizens, and that these were the great fundamental rights set forth in the act; and that they were set forth "as appertaining to every freeman."

The privileges and immunities designated in the second section of the fourth article of the Constitution are, then, according to the decision cited, those which of right belong to the citizens of all free governments, and they can be enjoyed under that clause by the citizens of each State in the several States upon the same terms and conditions as they are enjoyed by the citizens of the latter States. No discrimination can be made by one State against the citizens of other States in their enjoyment, nor can any greater imposition be levied than such as is laid upon its own citizens. It is a clause which insures equality in the enjoyment of these rights between citizens of the several States while in the same State.

Nor is there anything in the opinion in the case of Paul against Virginia[3] which at all militates against these views, as is supposed by the majority of the court. The act of Virginia, of 1866, which was under consideration in that case, provided that no insurance company, not incorporated under the laws of the State, should carry on its business within the State without previously obtaining a license for that purpose; and that it should not receive such license until it had deposited with the treasurer of the State bonds of a specified character, to an amount varying from thirty to fifty thousand dollars. No such deposit was required of insurance companies incorporated by the State,

[1] May 31, 1870; 16 Stat., 144. [2] 4 Washington, Cir. Ct., 380. [3] 8 Wallace, 168.

for carrying on its business within the State; and in the case cited, the validity of the discriminating provisions of the statute of Virginia between her own corporations and the corporations of other States was assailed. It was contended that the statute in this particular was in conflict with the clause of the Constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." But the court answered, that corporations were not citizens within the meaning of this clause; that the term citizens as there used applied only to natural persons, members of the body politic owing allegiance to the State, not to artificial persons created by the legislature and possessing only the attributes which the legislature had prescribed; that though it had been held that where contracts or rights of property were to be enforced by or against corporations the courts of the United States would, for the purpose of maintaining jurisdiction, consider the corporation as representing citizens of the State, under the laws of which it was created, and to this extent would treat a corporation as a citizen within the provision of the Constitution extending the judicial power of the United States to controversies between citizens of different States, it had never been held in any case which had come under its observation, either in the State or Federal courts, that a corporation was a citizen within the meaning of the clause in question, entitling the citizens of each State to the privileges and immunities of citizens in the several States. And the court observed, that the privileges and immunities secured by that provision were those privileges and immunities which were common to the citizens in the latter States, under their constitution and laws, by virtue of their being citizens; that special privileges enjoyed by citizens in their own States were not secured in other States by the provision; that it was not intended by it to give to the laws of one State any operation in other States; that they could have no such operation except by the permission, express or implied, of those States; and that the special privileges which they conferred must, therefore, be enjoyed at home unless the assent of other States to their enjoyment therein were given. And so the court held, that a corporation, being a grant of special privileges to the corporators, had no legal existence beyond the limits of the sovereignty where created, and that the recognition of its existence by other States, and the enforcement of its contracts made therein, depended purely upon the assent of those States, which could be granted upon such terms and conditions as those States might think proper to impose.

The whole purport of the decision was, that citizens of one State do not carry with them into other States any special privileges or immunities, conferred by the laws of their own State, of a corporate or other character. That decision has no pertinency to the questions involved in this case. The common privileges and immunities which of right belong to all citizens stand on a very different footing. These the citizens of each State do carry with them into other States, and are secured there by the clause in question in the enjoyment of such privileges and immunities upon terms of equality with citizens of the latter States. This equality in one particular was enforced by this court in the recent case of Ward vs. The State of Maryland, reported in the 12th of Wallace. A statute of that State required the payment of a larger sum from a non-resident trader for a license to enable him to sell his merchandise in the State than it did of a resident trader, and the court held that the statute in thus discriminating against the non-resident trader contravened the clause securing to the citizens of each State the privileges and immunities of citizens of the several States. The privilege of disposing of his property, which was an essential incident to his ownership, possessed by the non-resident, was subjected by the statute of Maryland to a greater burden than was imposed upon a like privilege of her own citizens. The privileges of the non-resident were in this particular abridged by that legislation.

What the clause in question did for the protection of the citizens of one State against hostile and discriminating legislation of other States the fourteenth amendment does for the protection of every citizen of the United States against hostile and discriminating legislation against him in favor of others, whether they reside in the same or different States. If under the fourth article of the Constitution equality of privileges and immunities is secured between citizens of different States, under the fourteenth amendment the same equality is secured between citizens of the United States.

* * * * * * * * * * *

Mr. Justice BRADLEY dissenting:

Can the Federal courts administer relief to citizens of the United States whose privileges and immunities have been abridged by a State? Of this I entertain no doubt. Prior to the fourteenth amendment this could not be done, except in a few instances, for the want of the requisite authority.

As the great mass of citizens of the United States were also citizens of individual States, many of their general privileges and immunities would be the same in the one capacity as in the other. Having this double citizenship, and the great body of municipal laws intended for the protection of person and property being the laws of the State, and no provision being made, and no machinery provided by the Constitution,

except in a few specified cases, for any interference by the General Government between a State and its citizens, the protection of the citizen in the enjoyment of his fundamental privileges and immunities (except where a citizen of one State went into another State) was largely left to State laws and State courts, where they will still continue to be left unless actually invaded by the unconstitutional acts or delinquency of the State governments themselves.

Admitting, therefore, that formerly the States were not prohibited from infringing any of the fundamental privileges and immunities of citizens of the United States, except in a few specified cases, that cannot be said now, since the adoption of the fourteenth amendment. In my judgment it was the intention of the people of this country in adopting that amendment to provide national security against violation by the States of the fundamental rights of the citizen.

The first section of this amendment, after declaring that all persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the United States and of the State wherein they reside, proceeds to declare further, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws;" and that Congress shall have power to enforce by appropriate legislation the provisions of this article.

Now, here is a clear prohibition on the States against making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States.

If my views are correct with regard to what are the privileges and immunities of citizens, it follows conclusively that any law which establishes a sheer monopoly, depriving a large class of citizens of the privilege of pursuing a lawful employment, does abridge the privileges of those citizens.

The amendment also prohibits any State from depriving any person (citizen or otherwise) of life, liberty, or property without due process of law.

In my view, a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously adopted, does deprive them of liberty as well as property, without due process of law. The right of choice is a portion of their liberty; their occupation is their property. Such a law also deprives those citizens of the equal protection of the laws, contrary to the last clause of the section.

The constitutional question is distinctly raised in these cases; the constitutional right is expressly claimed; it was violated by State law, which was sustained by the State court, and we are called upon in a legitimate and proper way to afford redress. Our jurisdiction and our duty are plain and imperative.

It is futile to argue that none but persons of the African race are intended to be benefited by this amendment. They may have been the primary cause of the amendment, but its language is general, embracing all citizens, and I think it was purposely so expressed.

The mischief to be remedied was not merely slavery and its incidents and consequences; but that spirit of insubordination and disloyalty to the National Government which had troubled the country for so many years in some of the States, and that intolerance of free speech and free discussion which often rendered life and property insecure, and led to much unequal legislation. The amendment was an attempt to give voice to the strong national yearning for that time, and that condition of things, in which American citizenship should be a sure guarantee of safety, and in which every citizen of the United States might stand erect in every portion of its soil, in the full enjoyment of every right and privilege belonging to a freeman, without fear of violence or molestation.

But great fears are expressed that this construction of the amendment will lead to enactments by Congress interfering with the internal affairs of the States, and establishing therein civil and criminal codes of law for the government of the citizens, and thus abolishing the State governments in everything but name; or else that it will lead the Federal courts to draw to their cognizance the supervision of State tribunals on every subject of judicial inquiry, on the plea of ascertaining whether the privileges and immunities of citizens have not been abridged.

In my judgment no such practical inconveniences would arise. Very little, if any, legislation on the part of Congress would be required to carry the amendment into effect. Like the prohibition against passing a law impairing the obligation of a contract, it would execute itself. The point would be regularly raised in a suit at law, and settled by final reference to the Federal court. As the privileges and immunities protected are only those fundamental ones which belong to every citizen, they would soon become so far defined as to cause but a slight accumulation of business in the Federal courts. Besides, the recognized existence of the law would prevent its frequent violation. But even if the business of the national courts should be increased, Congress could easily supply the remedy by increasing their number and efficiency. The great question is, what is the true construction of the amendment? When once

we find that, we shall find the means of giving it effect. The argument from inconvenience ought not to have a very controlling influence in questions of this sort. The national will and national interest are of far greater importance.

In my opinion the judgment of the supreme court of Louisiana ought to be reversed.

C.—*Extract from the analytical index to the "Treaties and Conventions of the United States with other Powers."*

NATURALIZATION:

citizens of one nationality are to be deemed and taken to have become citizens of the other, who during a continuous residence of five years in the territories of the other have become naturalized there—Austria, Sweden and Norway; who have resided uninterruptedly there five years, and before, during, or after that time, have become or shall become naturalized—Baden; who have become or shall become naturalized, and shall have resided there uninterruptedly five years—Bavaria, Hesse, Mexico, North Germany; as explained in the protocol—Würtemberg; who may or shall have been naturalized there—Belgium, Denmark; who have become or shall become naturalized—Great Britain.

the declaration of intention to become a citizen has not the effect of citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden, and Norway, Würtemberg.

naturalized citizens are liable on return to their original country to be tried and punished for offenses committed before emigration, subject to the limitations established by law—Austria, Baden, Bavaria, Belgium, Hesse, Mexico, North Germany, Sweden and Norway, Würtemberg; but not for emigration itself—Bavaria, Sweden and Norway.

when a naturalized citizen remains liable to trial and punishment for violation of laws of his old country relative to military duty—Austria, Baden, Belgium, Sweden and Norway.

a naturalized citizen may renounce his acquired citizenship—Austria, Baden, Bavaria, Hesse, Mexico, North Germany, Sweden and Norway, Würtemberg; but this renunciation does not entitle him to recover his former citizenship without the consent of the government—Bavaria.

a return of the naturalized citizen to his original country is not of itself a renunciation—Austria, Baden.

no fixed period of residence in his original country works of itself a renunciation—Austria, Baden.

a residence in the old country without intent to return works a renunciation—Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden and Norway, Würtemberg.

the intent not to return may be held to exist when the residence is for more than two years—Bavaria, Denmark, Hesse, Mexico, North Germany, Sweden and Norway, Würtemberg; but that presumption may be rebutted by evidence—Mexico.

naturalized citizens may re-acquire their lost citizenship in the old country in the manner provided by law—Belgium, Denmark; in the manner and on the conditions prescribed by the old government—Great Britain, Sweden and Norway.

provisions concerning citizenship of inhabitants of territories annexed to the United States—France, Spain, Mexico, Russia.

D.—*Extract from the Regulations for the Consular Service.*

ARTICLE XI.—*Passports and protection of citizens of the United States.*

102. Passports are to be issued only to citizens of the United States. To issue a passport to a person not a citizen is a penal offense, punishable, on conviction, by imprisonment not exceeding one year, or by a fine not exceeding $500, or both. *Persons who have merely declared their intention to become citizens are not citizens of the United States within the meaning of the law.*

103. Passports can be issued only at this Department, or by the chief diplomatic representative of the United States at a legation; or, in the absence of such a representative from the country, then by the consul-general, if there be one, or, in the absence of both of the officers last named, by a consul, (Form 9.)

104. Passports are to be verified only by the consular officer of the place where it is required, for which a fee of one dollar in the gold coin of the United States, or its equivalent, will be collected. In the absence of such consular officer the *visa* may be given by the principal diplomatic representative; in which case there will be no fee. (See Form 10.)

105. At the close of each quarter, returns are to be made to this Department, in the manner heretofore prescribed, of the names, and all other particulars, of the persons to whom the passports shall be granted, issued, or verified, as embraced in such passports, together with the amount of the taxes or fees collected for the same, which taxes or fees will be charged on the books of the Treasury to the person receiving the same, and will be brought to the credit of the United States in the adjustment of his quarterly accounts.

106. The rules and practice on this subject hitherto prevailing in the Department will remain unchanged. In the legations and consulates of the United States the best evidence of the citizenship of the applicant will be the production of a passport from this Department, coupled with proof that the person in whose behalf it is presented is the person named in the passport. In the absence of such evidence the applicant will make a written declaration stating his name, place of birth, age, and such other facts as shall be required. He shall also furnish such proof of his identity as shall be required by the minister or consul; and if a naturalized citizen, he shall also furnish the original, or a certified copy of the decree of the court by which he was declared to be a citizen; and it shall be the duty of the minister or consul, at the close of each quarter, to transmit to the Department a statement of the evidence on which all such passports were issued or granted.

107. When the applicant is accompanied by his wife, minor child, or servants, it will be sufficient to state in the passport the names of such persons, and their relationship, to or connection with him. A separate passport must be issued for each person of full age, not the wife or servant of another, with whom he or she is traveling.

108. No *visa* will be attached to a passport after a year from its date. A new passport may, however, be issued in its place by the proper authority, as hereinbefore provided, if desired by the holder.

109. Applications have sometimes been made to the diplomatic and consular agents of the Government for the issue of certificates of citizenship to persons residing in foreign lands and claiming to be American citizens. Hereafter no certificates will be issued, except in the form of passports under the regulations herein prescribed, unless a different form be prescribed by the laws of the country in which the agency or consulate is situated; in which case the agent or consul will transmit to the Department a copy of the prescribed form. And inasmuch as such evidence of citizenship may be claimed as *prima facie* evidence of the right of the holder to be protected by the power of the Government of the United States, so long as he conducts himself peaceably and obeys the laws of the foreign state in which he resides, therefore, to protect the dignity of such citizenship, and to guard against fraudulent assumption of it, consuls and ministers will be strict in the observance of the rules herein laid down, and will exercise due caution in issuing passports to applicants. And when their intervention is invoked on behalf of citizens of the United States residing in foreign countries, they will be careful to remember that it is as incumbent on such persons, as it is upon the citizens or subjects of such foreign countries, to observe the laws of the country in which they reside.

110. The official action of the representatives of the United States may also be asked in foreign lands in favor of natives thereof who have been naturalized in the United States. Should passports or other protection be asked for by persons, it will be the duty of the officer to satisfy himself that they have done nothing to forfeit their acquired rights. For a naturalized citizen may, by returning to his native country and residing there with an evident intent to remain, or by accepting offices there inconsistent with his adopted citizenship, or by concealing for a length of time the fact of his naturalization, and passing himself as a citizen or subject of his native country until occasion may make it his interest to ask the intervention of the country of his adoption, or in other ways which may show an intent to abandon his acquired rights, so far resume his original allegiance as to absolve the government of his adopted country from the obligation to protect him as a citizen while he remains in his native land.

111. Cautious scrutiny is enjoined in such cases, because evidence has been accumulating in this Department for some years that many aliens seek naturalization in the United States without any design of subjecting themselves by permanent residence to the duties and burdens of citizenship, and solely for the purpose of returning to their native country and fixing their domicile and pursuing business therein, relying on such naturalization to evade the obligations of citizenship to the country of their native allegiance and actual habitation. To allow such pretensions would be to tolerate a fraud upon both the governments, enabling a man to enjoy the advantages of two nationalities and to escape the duties and burdens of each.

112. If the consul is satisfied that an applicant for protection has a right to his in-

tervention, he should interest himself in his behalf, examining carefully into his grievances. If he finds that the complaints are well founded, he should interpose firmly, but with courtesy and moderation, in his behalf.

113. If redress cannot be obtained from the local authorities the consul will apply to the legation of the United States, if there be one in the country where he resides, and will, in all cases, transmit to the Department copies of his correspondence, accompanied by a report.

114. The United States have treaties with several powers regulating the rights of naturalized citizens of the United States on their return to their native lands. The protection which the passport gives is regulated in each such case by the terms of the treaty. Copies of those several treaties are given in Appendix 2.

115. It is provided by the laws of 1855 (10 Statutes at Large, p. 604) that persons born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered to be citizens of the United States, provided that the right of citizenship shall not descend to persons whose fathers never resided in the United States. Within the sovereignty and jurisdiction of the United States such persons are entitled to all the privileges of citizens; but, while the United States may by law fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it ought not, by undertaking to confer the rights of citizenship upon the subject of a foreign nation who had not come within our territory, to interfere with the just rights of such nation to the government and control of its own subjects. If, by the laws of the country of their birth, children of American citizens born in such a country are subjects of its government, the legislation of the United States will not be construed so as to interfere with the allegiance which they owe to the country of their birth while they continue within its territory. If, therefore, such a person, who remains a resident in the country of his or her birth, applies for a passport as a citizen of the United States, such passport will be issued in the qualified form shown in Form No. 11.

116. The same law of 1855 further provides that any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen. The recognition of this citizenship will be subject to the qualification above referred to.

117. Passports should be numbered, commencing with No. 1, and so continuing consecutively until the end of the incumbent's term of office.

PART III.—LAWS OF OTHER COUNTRIES.

FRANCE.

[Translation.]

The provisions of the Code Napoléon,[1] March 8, 1803, are as follows:

CHAPTER I.—*On the enjoyment of civil rights.*

7. The exercise of civil rights is independent of the quality of a citizen, which is acquired and retained only in conformity to constitutional law.

8. Every Frenchman shall enjoy civil rights.

9. Every individual born in France of an alien may, within a year following the time when he shall have attained his majority, claim the quality of a Frenchman, provided that, in case he reside in France, he declares that it is his intention to fix his domicile there, and in case he reside in a foreign country he makes a declaration that he will take up his residence in France, and that he will establish himself there within a year, counting from the act of this declaration.

10. Every child of a French citizen born in a foreign country is French. Every child of French parents born abroad, whose father shall have lost his French citizenship, may recover this citizenship by fulfilling the formalities prescribed in article 9.

11. An alien shall enjoy in France the same civil rights as those accorded to the French by the treaties of the nation to which this alien shall belong.

12. An alien woman who shall have married a Frenchman shall follow the condition of her husband.

13. An alien who shall have permission by authority of the King to establish his

[1] Code Napoleon, "Code Civil," liv. i, c. 7.

domicile in France shall enjoy all civil rights as long as he shall continue to reside therein.

14. An alien even not residing in France may be cited before French courts for the execution of obligations contracted by him in France with a Frenchman; he may be arraigned before the tribunals of France for obligations contracted by him in a foreign country with Frenchmen.

15. A Frenchman may be arraigned before a court of France for obligations contracted by him in a foreign country, even with an alien.

16. In all affairs other than those of commerce the alien who shall be the plaintiff shall be obliged to give bail for the payment of the costs and damages resulting from the process, at least when he does not possess real estate in France of a sufficient value to insure this payment.

CHAPTER II.—*On the forfeiture of civil rights.*

SECTION I. On the forfeiture of civil rights by the loss of French citizenship.

17. French citizenship shall be lost, first, by naturalization in a foreign country second, by the acceptance, without the authorization of the King, of a public office conferred by a foreign government; third, and finally, by any establishment in a foreign country without intent to return. Commercial establishments can never be considered as having been made without intent to return.

18. A native of France who shall have lost his citizenship may always recover it on re-entering France with the authorization of the King, and on declaring that he wishes to remain there, and that he renounces all distinction contrary to French law.

19. A French woman who shall marry an alien shall follow the condition of her husband. If she become a widow she shall recover her quality of a French citizen provided that she reside in France, or that she return there with the authorization of the King, and on declaring that she wishes to establish herself there.

20. Individuals who shall regain the quality of French citizens in the cases provided for by articles 10, 18, and 19, shall not profit by it until they shall have fulfilled the conditions imposed on them by these articles, and only for the exercise of the rights opened for their benefit since this epoque.

21. The French citizen who, without the authorization of the King, shall enter a foreign military service, or who shall affiliate himself with a foreign military corporation, shall lose his French citizenship. He can re-enter France only by the permission of the King, and recover French citizenship only by fulfilling the conditions imposed on a foreigner about to become a citizen—all without prejudice to the punishment pronounced by criminal law against Frenchmen who have borne or shall bear arms against their country.

NATURALIZATION OF FRENCHMEN ABROAD.

An imperial decree of 1811 imposes severe penalties upon Frenchmen naturalized abroad without permission from their own government.

It is a question whether this decree is still in force, but it appears to have been acted upon in 1834; and it is referred to in an official communication from the French government in 1859.

At all events it has never been formally abrogated, and its existence in the French statute book must be borne in mind when the liberality of the French law in recognizing expatriation is extolled.

The other disabilities mentioned in it having been abolished, the only penalty enacted by this decree which could now be enforced is that of the seventy-fifth article of the penal code[1]:

"Every Frenchman who shall have borne arms against France shall be punished by death." (Imperial decree of the 26th of August, 1811.)

TITLE I. *French citizens naturalized in a foreign country with our authorization.*

ARTICLE 1. No French citizen can be naturalized in a foreign country without our authorization.

ART. 2. Our authorization shall be accorded by letters-patent drawn up by our chief justice, signed by our hand, countersigned by our secretary of state, indorsed by our cousin the Prince Archichancelier, inserted in the bulletin of laws, and registered in the imperial court of the last domicile of those whom they concern.

ART. 3. Frenchmen so naturalized in foreign countries shall enjoy the right of possessing, of transmitting property, and of succession thereto, even when the subject of the country where they shall be naturalized shall not enjoy these rights in France.

ART. 4. Children of a Frenchman naturalized in a foreign country, and who are born

[1] Les Cinq Codes "Code Pénal," liv. iii, article 75.

in that country, are aliens. They recover the quality of French citizens by fulfilling the formalities prescribed by articles 9 and 10 of the Code Napoléon. Nevertheless they shall collect inheritances, and exercise all rights which shall be open to their profit during their minority, and in the ten years which shall succeed the time when they shall attain their majority.

ART. 5. Frenchmen naturalized in a foreign country even with our authorization shall never bear arms against France under penalty of being arraigned before our courts, and condemned to the punishment provided in the penal code, book 3, articles 75 and following.

TITLE II.—*French citizens naturalized in a foreign country without our authorization.*

ARTICLE 6. Any Frenchman naturalized in a foreign country without our authorization shall suffer the loss of his property, which shall be confiscated. He shall no longer have the right to inherit property, and any legacies which may be left to him shall pass into the hands of the person whose claim is next to his, provided that such person be a French citizen.

ART. 7. It shall be proved before the court of the last domicile of the defendant, on the initiative of our "procureur-general," or on the request of the civil party interested, that the individual, having been naturalized in a foreign country without our authority, has lost his civil rights in France; and consequently, the succession opened to his profit shall be adjudged to whomsoever has the right thereto.

ART. 8. Individuals whose naturalization in a foreign country without our authorization shall have been proved, as provided in the preceding article, and who shall have received, directly or by transmission, titles instituted by the "senatus consultum" of the 14th August, 1806, shall forfeit them.

ART. 9. These titles, and the property thereto attached, shall devolve upon the next in law, excepting the rights of the wife, which shall be regulated as in case of widowhood.

ART. 10. If the individuals mentioned in article 8 shall have received any of our orders, they shall be stricken off from the registers and rolls, and shall be forbidden to wear the decoration.

ART. 11. Those who were naturalized in a foreign country, and against whom proceedings shall have taken place as provided in articles 6 and 7 preceding, if found within the territories of the empire, shall, on the first offense, be arrested and conducted across the frontier; on a repetition of the offense, they shall be indicted before our courts and condemned to imprisonment for a period of not less than one year nor more than ten years.

ART. 12. And no commutation or release from the punishment above mentioned can take place but by letters of relief granted by us in conseil privé as letters of pardon.

ART. 13. Every individual naturalized in a foreign country without our authorization, who shall bear arms against France, shall be punished in conformity with article 75 of the penal code.

The ninth article of the Code Napoléon was modified by a law of 1851:

"January 28-29, and February 7, 1851. (10th series, No. 2,730.) (article 9, C. N.) Law concerning individuals born in France of foreigners who themselves were born there, and the children of naturalized foreigners:

"ARTICLE 1. Every individual born in France of an alien who himself was born there, is himself a French citizen, provided that within a year after attaining his majority, as fixed by French law, he does not claim the quality of a foreigner by a declaration made either before the municipal authority of the place of his residence, or before the diplomatic agents or consuls accredited to France by the foreign government.

"2. Article 9 of the civil code is applicable to the children of a naturalized foreigner, although born in a foreign country, if they were minors at the time of the naturalization. As regards the children born in France or abroad, who were of age at this same period, article 9 of the civil code is applicable in the year following that of the said naturalization."

By the law on the army of 1831, (21st March, 1832,) "No one shall be allowed to serve in the French army who is not a French citizen."

This provision has led to much correspondence between France and other powers, more especially the United States, respecting the right to exemption from the conscription, on their return to France, of Frenchmen naturalized abroad.

In 1859 M. Walewski furnished the American chargé d'affaires with an authoritative declaration of the views of the French government on this point:

"PARIS, *November* 25, 1859.[1]

"SIR: I have the honor to communicate to you the reply of the government of the Emperor to the questions which the deceased Mr. Mason had put to him in his letter of

[1] Senate Ex. Doc., 1859-'60, vol. xi, p. 214.

the 27th of July last, relative to Frenchmen emigrants to the United States who have there obtained letters of naturalization.

"After having set forth the principles of the American law in the matter of naturalization, Mr. Mason reduced his inquiry to a formula, as follows:

"*First question.* Does the French legislation recognize in individuals, French by birth, the right to cause themselves to be naturalized as subjects or citizens of a foreign country, without preliminary authorization from the government?

"French legislation does not confer on a Frenchman the right to renounce his nationality, but he loses it by positive law (article 7, Code Napoléon) through naturalization in a foreign country.

"That naturalization, by the terms of the decree of August 26, 1811, may have grave consequences, provided for by that decree, when it has not been authorized by the government.

"Even in cases in which such authorization has been accorded, it effectively disperses the prejudicial results of an unauthorized naturalization, but expressly maintains the loss of nationality.

"*Second question.* Are Frenchmen by birth, but naturalized citizens of the United States, who return to France without having the intention to recover their nationality nor to establish themselves permanently, subject to the law of conscription?

"The law of conscription imposes on every Frenchman the obligation of military service. It attaches to the fulfillment of this obligation a penal sanction.

"Therefore, the Frenchman who, before he had lost that quality, shall have emigrated, thus placing himself out of the way of the obligation of military service, would assuredly be punishable on his return to France, even although he should have obtained a foreign naturalization, and he may be prosecuted, whether as refractory (article 230 du nouveau code militaire, loi du Juin, 1859) or as a deserter, (articles 235, 236, 237, of same date.)

"This, moreover, is recognized by the Government of the United States, as it is a sequence from the letter of Mr. Mason, that it refuses its protection to the Frenchman become a stranger, in the two cases following:

"1. If the obligation of military service be anterior to the epoch of emigration.

"2. If, before his emigration, the Frenchman had not satisfied the law of conscription. The question becomes more difficult when it treats of a man born abroad of French parents, and who, consequently, by the provisions of article 10 of Code Napoléon, is himself a Frenchman, and bound to military service, in conformity with article 6 of the law of March 21, 1832.

"But if, in France, the quality of citizen is now actually acquired by parentage, yet, for a long time, nativity alone conferred it, and it may still be so in the United States. In such a case it would be hard to subject to French law an individual who should have fulfilled similar obligations toward the country in which he was born.

"*Third question.* Does the French law of conscription render the Frenchman born and resident in a foreign country subject to military service in the same degree as if he had not left the country of his birth, or as if he had not caused himself to be naturalized as a foreigner?

"This question is disposed of by the solution which the Federal Government itself admits to the second.

"If, in effect, the Frenchman, before emigrating and causing himself to be naturalized in a foreign country, has not satisfied the obligation of military service, evidently he may be prosecuted in France, in case of his return, even though the return should be only accidental. Besides, he might, during his absence, have been sentenced for contumacy, and his presence in France would impose, as well on the public authority as himself, the duty of clearing off this contumacy.

"Such are the solutions which the three questions that the legation of the United States has presented to me can receive. It is difficult, however, to treat them theoretically, without knowledge of the circumstances which may have given birth to them, which often are of a nature to draw out modifications of the application of strict law.

"I will add that all the points treated in the present dispatch present veritable questions of state, upon which the government of the Emperor can only express opinions, but the solutions belong exclusively to the courts.

"Receive, &c.,

"WALEWSKI.

"Mr. CALHOUN,
"*Chargé d'Affaires of the United States at Paris.*"

It will be seen from M. Walewski's note that he considered that a Frenchman naturalized abroad was liable to the law of conscription on his return to France; but a case occurred in 1860 in which it was decided by a civil tribunal that naturalization in a foreign country exempted a Frenchman from the conscription.

The case, that of Mr. Zeiter, is frequently referred to in the correspondence, and is of importance as establishing a principle of French law.

It has never been published, but a copy has now been procured from Wissembourg, where the judgment was delivered, and is printed in the addenda (F.)

These conscription cases are ordinarily dealt with by the local military tribunals, (conseils de guerre,) and there does not seem to have been any other instance of a recent decision on the subject by a civil court, nor does this provincial judgment appear to have been revised by a superior court.

Lord Lyons has been good enough to procure a report from M. Treitt, the counsel to the Paris embassy, upon the general question of the status in France of Frenchmen naturalized abroad, with reference especially to their liability to the conscription.

As this report gives full explanation of the French law and of the practice of the French government, it is here inserted at length:

"PARIS, *January* 26, 1868.

"His Excellency LORD LYONS, *embassador of Her Britannic Majesty at Paris:*

"MY LORD: Your excellency has requested of me a copy of a judgment rendered by the French court at Wissembourg, in favor of Michel Zeiter, a French citizen by birth. The judgment is quoted by Laurence, in his notes on Wheaton, (edition of 1863,) as having discharged Michel Zeiter from all the obligations which a Frenchman owes to his country, among others the obligation to perform military service. The reason alleged for this decision is that Zeiter had been naturalized as a citizen of the United States.

"It is added that this judgment seems to be one of the rare decisions (if not the only one) in which a court has acknowledged that the naturalization of a person in a foreign country is sufficient to annul the sovereign rights of the mother country, and the obligations which he has there contracted by his birth.

"In view of the remarks which I had the honor to address to your excellency, you have referred me to a note which Count Walewski, minister of foreign affairs of France, addressed to Mr. Calhoun, the American minister, under date of November 25, 1859, which note was published in 1860 among the documents communicated to the Congress of the United States. In that note M. Walewski does not admit that a French citizen can, by the mere fact of his naturalization abroad, be exempted from the obligations imposed upon him by the laws of his country, and escape, among other requirements, the military service. In this latter case, says the minister, such refractory Frenchman incurs the penalties provided by the military code (article 230) for failure to perform military duty. M. Walewski, moreover, calls attention to the imperial decree of August 26, 1811, which provides severe penalties for Frenchmen who have become naturalized as foreigners without the authorization of their government.

"Finally, your excellency has been pleased to point me to the case of one Alibert, belonging to the class of 1839, who failed to perform military duty, and who was, on the 10th of October, 1852, sentenced to be imprisoned for one month therefor, by a court-martial at Marseilles. He appealed, however, from this sentence, to the court of revision at Toulon, and there, with the assistance of the American consul, he pleaded his naturalization in the United States, and was acquitted.

"In sum, your excellency has addressed to me the following question:

"What is the law governing a Frenchman who has been naturalized as a foreigner after his return to France?

"The question is simple, but the reply will necessarily be complex.

"I give, in the first place, a copy of a sentence of the court at Wissembourg, dated June 2, 1860. (Vide Addenda F.)

"As is seen, this sentence only shows that Zeiter has lost his French citizenship. The legal consequence of this showing is that he can no longer serve in the French army. It was no part of the duty of the court, however, to concern itself with the penalties and civil incapacities which Zeiter might have incurred, as we shall subsequently see. This decision is based upon law, as are several others rendered by different courts in similar cases, especially since the war between the North and South, on account of which many Frenchmen, naturalized as American citizens, returned to France.

"The naturalization of a Frenchman abroad, whatever may be his new country, involves the loss of his French citizenship, and this involves *ipso facto* incapacity for the military service. This is the case of Alibert; he doubtless proved his American citizenship, and was exempted from the penalty attached to the offense of willfully avoiding military duty, said penalty being imprisonment for from one month to one year, according to article 38 of the army law of 1832.

"The above two cases are not reported in any work on jurisprudence; they are not, however, the only ones; there are half a score of them in the bureau of military justice at the ministry of war.

"The military authorities in France observe with regret the disposition which has been manifested during the past three years, by the young men of the country, to avoid the performance of military duty.

"The ministry of war now proceeds in such cases as follows:

"When the case of a person who has sought to avoid the due performance of mili-

tary duty is brought before it, it has the party charged with the offense taken before a court-martial, for such a person is a soldier who has not rejoined his regiment.

"If the person seeking to avoid the performance of military duty pleads naturalization in a foreign country, the court-martial defers the enforcement of the penalty and grants the accused a delay, that he may be enabled to prove his foreign citizenship in the courts.

"If he obtains a judgment declaring that he has lost his French citizenship, the court-martial acquits him, but only when his naturalization took place three years before. If this is not the case, the judges enforce the penalty provided for the offense. In fact, the avoidance of military service is an offense which no mere lapse of time can cancel; it lasts until the military service is rendered. Now, the jurisprudence of courts-martial says that the offense no longer exists when the offender has become naturalized in a foreign country; thenceforward the offender who has been naturalized more than three years incurs no penalty. If, on the other hand, the naturalization did not take place more than three years previously, the ex-Frenchman is treated as a person willfully avoiding military service, and is punished, even though he be a citizen of some other country, no matter which.

"Thus, in order to escape such a penalty, the ex-Frenchman must pass at least three years abroad. If he returns before the expiration of such time, he incurs the risk of suffering imprisonment for from one month to one year, by sentence of court-martial, for he is still avoiding the performance of military duty.

"We must not forget to say that when, in this case, the person seeking to avoid military service has suffered his punishment, he is free, and his foreign citizenship prevents him from being compelled to serve in the French army.

"Such are the rules observed by the bureau of military justice at the ministry of war.

"Things are managed in about the same way for the national guard. There there are boards of verification.

"It is the duty of these boards to decide concerning the grounds of exemption claimed by persons who refuse to do military duty.

"Now, it often happens (this I say of my own knowledge) that natives of France, when called to serve in the national guard, present American or other naturalization papers. In presence of such documents these persons have been declared exempt from the service by reason of their foreign citizenship. Moreover, an opinion of the council of state of November 18, 1842, has sanctioned this system of jurisprudence.

"From all the foregoing observations what are we to conclude? It is that a Frenchman may, by getting naturalized abroad, escape the obligations which are imposed upon him by the country of his birth.

"This consequence is derived from the common law and from the exceptional law.

"Article XVII of the civil code expressly says that French citizenship is lost by naturalization acquired in a foreign country. It appears from the debates of the legislature of 1803 that the word 'acquired' was applied to an act of express will, performed according to the legal forms of the new country, and having for its object the renunciation, *proprio motu*, of French citizenship. (Locré, *Esprit du Code Civil*, vol. 1, p. 333.)

"The civil code, then, permits Frenchmen to acquire a foreign nationality. It is, in fact, a principle inherent in human liberty, a principle of natural right, that a person may leave the soil on which his birth may by chance have thrown him. This principle is admitted by all publicists from Cicero[1] down to those of our time. The French laws contain frequent enunciations of it. Naturalization in Prussia, however, is subject, it is said, to the previous authorization of the government. (Prussian code, article 2, book 17, § 127.)

"In France, however, according to the civil code, which is the common law, the right of being naturalized abroad is absolute.

"On the 26th of August, 1811, the Emperor Napoleon I promulgated a decree relative to the naturalization of Frenchmen abroad.

"Article I of this decree is as follows:

"'No Frenchman can be naturalized in a foreigncountry without our authorization.'

"The following articles mention the civil rights which Frenchmen naturalized in a foreign country shall continue to enjoy in France:

"Article VI is as follows:

"'ARTICLE VI. Any Frenchman naturalized in a foreign country, without our authorization, shall suffer the loss of his property, which shall be confiscated; he shall no longer have the right to inherit property, and any legacies which may be left to him shall pass into the hands of the person whose claim is next to his; provided that such person be a French citizen.'

"Finally, Article XI gives the government the power to expel from France any

[1] Ciceron, "Oratio pro Cornelio Balbo," c. 13; Grotius, lib. ii and v, § 24; Puffendorf, lib. viii, c. 11, sc. 2; Merlin, "Répertoire Général," verbo "Souveraineté," § 4; Wolf, 76th part, p. 187; "French Constitution of Frimaire, year VIII," in its 4th article; Toullier, "Code Civil," vol. i, No. 266; &c.

Frenchman naturalized in a foreign country without authorization; and, in case of his return to the territory of the empire a second time, he may be sentenced to be imprisoned for a term of not less than one year nor more than ten years.

"Napoleon I, it is said, was induced to promulgate this decree by seeing Frenchmen who were ill-disposed toward the empire among hostile nations and in foreign armies. Thus is explained the severity of this decree, which has been the object of the most bitter attacks. In the first place, it has been said that it was unconstitutional, because it was prepared and promulgated without the concurrence of the Corps Législatif, contrary to the *constitutions impériales*. Moreover, since the fall of the first empire, some writers have maintained that this decree has become obsolete. There are even decisions of the government of the Restoration which have annulled judgments rendered in virtue of this decree. (Decisions of the council of state of June 19, inserted in the *Bulletin des lois.*)

"A greater number of authors, however, have contended that this decree still had the force of a law, for the reason that it had never been attacked and annulled by the Corps Législatif. Moreover, numerous decisions have declared that the imperial decrees promulgated and executed as laws in the time of the empire have remained in force in all their provisions which have not been abrogated by subsequent laws. In fact, the decree of 1811 has been enforced in cases of legacies left by Frenchmen who had been naturalized abroad without authorization.[1]

"This decree, however, is none the less a violation of the natural law, as it provides severe penalties for naturalization abroad, while all publicists proclaim the right which every man has to change his country.

"This decree is, at the present day, paralyzed in its application; in fact, the confiscation of property was abolished by the charter of 1814. Then came the law of July 14, 1819, which gives all foreigners the same rights as Frenchmen, as regards property and inheritance, without distinction between foreigners by birth and foreigners by naturalization. A solemn decision of the court of Paris has decided that this decree is not applicable to the right of inheriting property.[2]

"The annals of jurisprudence have not, for more than twenty years, furnished a single case in which either the government or parties interested have caused the enforcement of the decree of 1811. I think that, if the case should be presented, the courts would hesitate a long time before enforcing the rigorous provisions of this exceptional legislation.

"But how many uncertainties are there in this matter, so important, since it affects the personal status of the parties.

"Let us observe, however, that the decree of April 26, 1811, (whether it is still in force or has become obsolete,) does not annul naturalizations acquired abroad without authorization; it inflicts penalties therefor, but allows them to exist. The Frenchman has therefore a new country, to which he has been obliged to take the oath of allegiance. No one can have two countries.[3] The general interest requires that no one should have two countries.[4]

"The country of adoption supplants the mother country. In my opinion the ex-Frenchman is released from his obligations toward the latter. The English government, in giving letters of naturalization to foreigners, notifies them, at the same time, that it does not intend to release them from their obligations toward their mother country.

"This is an act of prudence. But the French law is silent upon the rights which it retains over individuals who obtain naturalization abroad without authority. She places them on a similar footing to strangers so far as relates to civil rights. Thus the French law itself breaks the ties which unite an ex-Frenchman to his mother country. Aside from the confiscation of property and the loss of right of succession—penalties of 1811, to-day inapplicable and unapplied—the law imposes on the ex-Frenchman the sole obligation never to bear arms against France on pain of death.[5]

"The Frenchman who gives up his nationality knows the rights of which he will be deprived in France. The courts can refuse to give him their judgments in his disputes with foreigners. If he is plaintiff or defendant, he can be subjected to the category of *judicatum solvi*. He no longer enjoys any political or municipal rights. He is disqualified for public offices and the practice of certain professions; in short, to curtail the list, he can be expelled from French territory, like all other strangers, by a simple act of the police.[6]

"Frenchmen must have calculated inconveniences and the advantages of foreign naturalization. He is released from the burdens imposed by the mother country.

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[1] See, among others, a decision of the court of Pau, of March 19, 1834. (Collection of Decisions, of Dalloz, year 1835, 2d part, p. 38.) [2] Decision of February 1, 1836. Dalloz's Collection of Decisions, 1836, 2d part, p. 71. [3] "Statement of reasons for the first title of the Civil Code," 1803. [4] General Repertory of Merlin, verbo "Loi," § 6. [5] Article 75 of the Penal Code; and article 11 of the Decree of August 26, 1811; articles 21 and 22 of the Civil Code. [6] Article 13, Loi du 3 Decembre 1849, sur les etrangers.

"This state of things is to be regretted. For instance, to become naturalized a Swiss, one year's residence and the payment of a few francs are sufficient. It is a great facility given to young Frenchmen who wish to escape the military law. This point merits the attention of French legislators, but at this moment the law must be taken as it is, and it must be conceded that naturalization abroad releases a Frenchman from his obligations toward France. The decisions of the courts only confirm the expatriation; the consequences of expatriation emanate from the laws themselves; one of these consequences is the exemption from military service.

"I believe that I have answered in every particular the question which your excellency has put to me. I have freed it from all collateral questions which the loss of French nationality suggests, but which would have rendered the subject obscure. In sum, I am led to the conclusion that France does not impose any other obligation on the ex-Frenchman than not to bear arms against her.

"I take leave to add that this conclusion shocks my inward feelings. I regret to see a simple naturalization abroad cancel all the obligations which are due to the mother country. But questions of law are not solved by the feelings alone; it is a matter of law as it is and not as it ought to be.

"Accept, &c.,

"TREITT,

"*Advocate of the Imperial Court, Counsel to the English Embassy.*"

NATURALIZATION OF ALIENS IN FRANCE.

Under the old law of France, the Dutch and Swiss and other nations had, by virtue of treaties, the rights of natives, (*indigenatûs,*) and by the Bourbon Family Compact of 1761 a similar privilege was conceded to Spanish subjects.

The law of May 2, 1790, provided—

"All those who, born out of the kingdom, of foreign parents, are established in France, shall be regarded as French and admitted, upon taking the civic oath, to the exercise of the rights of active citizens after five years' continuous domicile in the kingdom, if they have, besides, acquired real estate or married a French woman, or established a commercial house, or received in any city letters of citizenship."

The constitution of the 3d of September, 1791, "allows the legislative power to issue to a foreigner, for important considerations, an act of naturalization, on condition only of his residence and oath."

Thus was established the system of "*grande et petité naturalisation,*" which, with various modifications, has continued in force up to the accession of the present Emperor.

The constitution of 1793 did away with the oath and declared French citizens all aliens aged 21 who had been domiciled in France for one year, and who lived by labor.

The constitution of 1795 abrogated that of 1793, and made it a condition of naturalization that an alien should have previously declared his intention to domicile himself in France.

By the terms of the third article of the constitution of 1801 "a foreigner becomes a French citizen when, after having attained the age of twenty-one years and declared the intention of settling in France, he has resided there ten consecutive years."

By a decree of the senate of 1804, confirmed by a decree of the 17th of February, 1808, the government was authorized to confer the quality of French citizen, after one year's residence, on any alien who had rendered important services to France, thus reviving the "*grande naturalisation*" of 1790, but without requiring an oath.

By an ordinance of the 4th of June, 1814, article 1, "in conformity to the ancient French constitutions, no foreigner can, from this day forth, sit, neither in the chamber of peers nor in that of the deputies, unless by important services rendered to the state he has obtained from us (the king) naturalization papers approved by the two chambers."

The privilege of "*grande naturalisation*" has been conferred on Benjamin Constant and other distinguished foreigners.

These laws were consolidated by the law of the 3d of December, 1849:

"ARTICLE 1. The President of the republic shall decide upon applications for naturalization.[1]

"Naturalization cannot be granted until after inquiry made by the government respecting the morality of the foreigner, and upon the favorable opinion of the counsel of state.

"The foreigner shall be obliged, besides, to fulfill the following conditions:

"1. To have, after the age of twenty-one years, obtained authority to establish his domicile in France in conformity to article 13 of the Civil Code.

"2. To have resided ten years in France since this authorization.

"A naturalized foreigner shall enjoy the right of eligibility for the National Assembly only by virtue of a law.

[1] Bulletin des Lois, vol. cixvii, p. 545.

"2. Notwithstanding, the delay of ten years can be reduced to one year in favor of foreigners who shall have rendered important services to France, or who shall have introduced into France an industrial enterprise, or useful inventions, or distinguished talents, or who shall have founded great institutions.

"3. So long as the naturalization shall not have been issued, the authority granted to a foreigner to establish his domicile in France can always be revoked by decision of the government, which must take the advice of the council of state.

"4. The provisions of the law of the 14th October, 1814, respecting the inhabitants of the departments annexed to France, cannot be applied in the future.

"The preceding provisions do not affect, in any respect, the rights of eligibility to the National Assembly acquired by naturalized foreigners before the promulgation of the present law.

"6. The foreigner who shall have made, before the promulgation of the present law, the declaration prescribed by the third article of the constitution of the year VIII, can, after a residence of ten years, obtain naturalization according to the form indicated in article 1.

"7. The minister of the interior can, through police, order all foreigners traveling or residing in France to immediately leave French territory and cause them to be conducted to the frontier.

"He shall have the same right regarding the foreigner who shall have obtained authority to establish his domicile in France; but after the lapse of two months the measure shall cease to be in force, if the authority shall not have been revoked as indicated in article 3.

"In the departments on the frontier the prefect shall have the same right in regard to a non-resident foreigner, subject to immediate reference to the minister of the interior.

"8. Every stranger who shall have evaded the execution of the measures specified in the preceding article, or in article 272 of the Penal Code, or who, after having left France in consequence of those measures, shall have returned without the permission of the government, shall be brought before the courts and condemned to an imprisonment of from one to six months.

"After the expiration of his term of punishment he shall be led to the frontier.

"The penalties prescribed by the present law can be reduced in conformity to the provisions of article 463 of the Penal Code."

On the 29th of June, 1867, a law was passed reducing the term of residence required from ten to three years:

"ART. 1. The articles 1 and 2 of the law of 3d December, 1849, are supplanted by the following provisions:

"ART. 1. A foreigner who, after the age of twenty-one years, has, in conformity to article 13 of the Code Napoléon, obtained authority to establish his domicile in France and has resided there three years, can be admitted to enjoy all the rights of a French citizen.

"The three years shall count from the day when the application for authority shall have been registered at the ministry of justice.

"The domicile in a foreign country to fill an office conferred by the French government is equivalent to residence in France.

"It is granted upon an application for naturalization, after inquiry into the moral character of the foreigner, by a decree of the Emperor, issued upon the report of the minister of justice, subject to the council of state.

"ART. 2. The delay of three years fixed by the preceding article, can be reduced to a single year in favor of foreigners who shall have rendered important services to France, who shall have introduced into France an industrial enterprise or useful inventions, or who shall have brought to it distinguished talents, or founded great institutions, or instituted great agricultural improvements.

"ART. 2. The fifth article of the law of December 3, 1849, is repealed."

It will be seen, therefore, that there are two forms of naturalization in France:

"La grande naturalisation,"[1] which confers the privilege of sitting in the chambers, and which corresponds, in some measure, to the former English form of special naturalization by act of Parliament, repealing the disabilities of previous acts in favor of a particular person, as was done in the case of Prince Albert, and to the present naturalization by act of Parliament, as in the Bischoff-sheim case.

"La petite naturalisation" corresponds with our naturalization by certificate from the secretary of state, and is granted by *lettres de déclaration de naturalité* to aliens who have complied with the conditions of the law. The alien is supposed to have resided in France with the permission of the government, from the fact of his name and dom-

[1] M. Dumangeat, in his note to M. Fœlix's Droit International Privé, doubts whether "la grande naturalisation" still exists, as by the decree of February 2, 1852, all electors are eligible to seats in the Corps Legislatif, and the senate is composed of such citizens as the Emperor may please to select; and he cites Prince Poniatowski as an instance of a citizen naturalized by imperial decree and promoted to the senate without any special law.

icile having been registered with the ministry of the interior, as required by the police regulations from all residents.

Debate in Corps Legislatif on the army bill, December, 1867.

In the recent discussion on the law for the reorganization of the army, M. des Rotours proposed the following amendment to the first clause of the bill:

"Persons born in France of foreign parents, and having had their residence there, will be subjected to the recruiting law in the year following that of their majority.

"Those among them who wish to preserve their character of foreigners will make declaration thereof, and shall be admitted into the foreign legion."

Maréchal Niel, the minister of war, spoke in favor of the principle of this amendment, and stated that the conscription ought at all events to be extended to the sons born in France of aliens themselves born in France, and who, by the law of 1851, were declared to be Frenchmen, unless they selected the nationality of their fathers on attaining their majority.

Objection was, however, taken to making such an alteration in the laws affecting the nationality of aliens by means of a clause introduced into an army bill; and, on M. Baroche, minister of justice, undertaking that the matter should receive the careful attention of the government, M. des Rotours withdrew his amendment.

Number of English subjects who, from 1851 *to* 1861, *obtained authority to establish their domicile in France, and of those who, during the same period, were naturalized as Frenchmen.*

Années.	Admission à domicile.	Naturalizations.
1851	8	—
1852	6	—
1853	6	1
1854	6	—
1855	5	1
1856	3	—
1857	9	—
1858	24	—
1859	13	—
1860	9	2
1861, Janvier à Avril	3	—
	92	4

(For further information respecting French naturalization, see Fœlix, "Droit International Privé," already cited, and "Revue de Droit Français et Etrangers," par MM. Fœlix Duvergier, &c., vol. xii., p. 321; Article, "De la Naturalisation collective et de la perte collective de la qualité de Français," par M. Fœlix, and vol. x, p. 446; "Des Effets de la Naturalisation," par M. Fœlix; and "Dictionnaire de Droit," par M. Dalloz, "Naturalisation.")

PRUSSIA.

NATURALIZATION OF ALIENS IN PRUSSIA.

[Translation.]

In Prussia the foreigner acquires the right of citizenship by his nomination to a public office. Thus the law of the 31st of December, 1842, gives to the superior administrative authorities (*régenees*) the power to accord naturalization to a foreigner who justifies it by good conduct and the means of livelihood. The law excepts only Jews, the subject of a state forming part of the Germanic Confederation, minors and other persons incapable of acting for themselves; with respect to the latter it contains special provisions. An alien woman acquires the right of a Prussian subject by her marriage with a Prussian.

Provision was made by the constitution of the Germanic Confederation for the reciprocal admission of the subjects of one state to the privileges of citizenship in the other states.

Extract from the laws of Prussia, of December 31, 1842, concerning the loss of the quality of a Prussian subject.

§ 15. The quality of a Prussian subject is lost—

1. By discharge upon the subject's request.
2. By sentence of the competent authority.
3. By living ten years in a foreign country.
4. By the marriage of a female Prussian subject with a foreigner.

§ 16. The discharge has to be asked for from the police authority of the province in which the subject's domicile is situated, and is effected by a document made out by the same authority.

§ 17. The discharge cannot be granted—

1. To male subjects who are between seventeen and twenty-five years of age, until they have got a certificate of the military commission of recruitment of their district, proving that their application for discharge is not made merely to avoid the fulfilling of their military duty in the standing army.
2. To actual soldiers, belonging either to the standing army or to the reserve; to officers of the militia and to public functionaries, before their being discharged from service.
3. To subjects having formerly served as officers in the standing army or the militia, or having been appointed military employés, with the rank of officers, or civil functionaries, before they have got the consent of their former chief.
4. To the persons belonging to the militia, not being officers, after their having been convoked for actual service.

§ 18. To subjects wishing to emigrate into a state of the German Confederacy, the discharge may be refused if they cannot prove that the said state is willing to receive them. (See act of the German Confederation, art. 18, No. 2, lit. A.)

§ 19. For other reasons than those specified in §§ 17 and 18, the discharge cannot be refused in time of peace. For the time of war, special regulations will be made.

§ 20. The document of discharge effects, at the moment of its delivery, the loss of the quality as Prussian subject.

§ 21. If there is no special exception, the discharge comprehends also the wife and the minor children that are still under their father's authority.

§ 22. Subjects living in a foreign country may lose their quality as Prussians by a declaration of the police authority of Prussia, if they do not obey, within the time fixed to them, the express summons for returning to their country.

§ 23. Subjects who either—

1. Leave our states without permission, and do not return within ten years, or—
2. Leave our states with permission, but do not return within ten years after the expiration of the term granted by the said permission, lose their quality as Prussian subjects.

§ 24. *Entering into public service in a foreign state.*

The entering of a subject into public service in a foreign state is allowed only after his discharge (see § 20) has been granted to him. Anybody who has obtained it is permitted to do so without restriction.

§ 25. A subject who—

1. Either takes public service in a foreign state with our immediate permission—
2. Or is appointed in our states by a foreign power, in an office established with our permission, as, for instance, that of consul, commercial agent, &c., remaining in his quality as a Prussian.

§ 26. *General disposition.*

Subjects who emigrate without having obtained their discharge, or violate, by their entering into public service in a foreign state, the disposition of § 24, are to be punished according to the laws existing in that respect.

Given under our hand and seal, Berlin, this 31st of December, 1842.

[L. S.] FREDERICK WILLIAM.

Extract from the Constitution of Prussia, 1850.

TIT. I. Rights of the Prussians.

ART. 1. The right to emigrate cannot be restricted by the state, except with respect to the duty of military service.

See also a memorandum furnished to the United States minister at Berlin by the Prussian government in 1859. (Appendix G.)

AUSTRIA.

NATURALIZATION OF ALIENS.

In Austria an alien acquires the rights of citizenship by being named a public functionary.[1] The government can also confer those rights upon an alien who has been previously authorized to exercise a profession after ten years' residence.

No one can exercise any profession in Austria without the permission of the authorities.

Mere admission into the military service does not give the right of naturalization.

The wife of an Austrian becomes an Austrian subject by her marriage.

EXPATRIATION.

Emigration is not permitted without the consent of the proper authorities; but the emigrant who has obtained permission and who quits the empire *sine animo revertendi* forfeits his privileges as an Austrian subject.

For a fuller account of the Austrian laws, see the report by the counsel of the Vienna embassy. (Addenda H.)

BAVARIA.

NATURALIZATION OF ALIENS

Naturalization is acquired—

1. By the marriage of a foreign woman with a Bavarian;[2]
2. By domicile, on affording proof of having been liberated from personal allegiance to a foreign state;[3]
3. By royal decree, under the supervision of the council of state.

EXPATRIATION.

By naturalization in a foreign country without having previously obtained authorization from the King;

By emigration;

By the marriage of a Bavarian woman with an alien.

WÜRTEMBERG.

NATURALIZATION.

An alien must belong to a commune in order to have the rights of citizenship, unless he has been named to some public employment.[4]

EXPATRIATION.

The rights of citizenship are lost by emigration under the authority of government and by accepting foreign service.

NETHERLANDS.

The power of conferring naturalization rests with the King. (Articles 9 and 10 of he constitution of 1815.[5])

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[1] Fœlix, vol. i, p. 98. [2] Fœlix, vol. i, p. 99. [3] Sir R. Phillimore, vol. 1, p. 352. [4] Fœlix, vol. 1, p. 99. [5] Ibid., p. 100.

RUSSIA.

An alien becomes naturalized by taking an oath of fidelity to the Emperor; but he can, if he wishes it, renounce his naturalization and return to his native country.[1]

Naturalization law of the 6th of March, 1864.[2]

A.—1. A foreigner must be domiciled in the empire before he can be admitted as a Russian subject.[3]

2. A foreigner wishing to become domiciled in Russia must inform the governor of the province in which he wishes to reside of his desire to do so, explaining the nature of his occupation in his own country, and the pursuits he purposes to follow in Russia. On the receipt of such declaration the petitioner is considered to be domiciled in Russia, but will nevertheless be accounted a foreigner until he shall have taken the oath of allegiance.

3. Foreigners already resident in Russia, distinguished in art, trade, commerce, or in any other pursuit, may prove their domiciliation by other means than those specified in § 2.

4. A foreigner, after being domiciled five years in Russia, may apply to be admitted to Russian allegiance.

5. Foreign married women cannot become Russian subjects without their husbands.

6. The allegiance, when sworn to, is merely personal, and does not affect children, whether of age or minors, previously born. Those born after the adoption of Russian nationality are acknowledged as Russians.

7. Specifies rule to be observed in petitioning the minister of the interior to be admitted to Russian allegiance, (documents and declaration required, &c.)

8. It is optional with the minister to grant the above petition or not.

9. An oath to be taken.

10. Mode of taking oath.

11. In special cases, the period requisite to constitute a domicile may be shortened.

12. Children of foreigners not Russian subjects, born and educated in Russia, or, if born abroad, yet who have completed their education in a Russian upper or middle school, will be admitted to Russian allegiance, should they desire to do so, a year after they shall have attained their majority.

13. The children of foreigners wishing to become Russian subjects will be admitted on the same terms as their parents.

14. Foreigners in the Russian military or civil service, or ecclesiastics of foreign persuasions, will be admitted to Russian allegiance without period of domicile.

15. A Russian subject marrying a foreign husband, and therefore considered a foreigner, may, on the death of her husband, or in case of her divorce, return to her former allegiance.

16. The children in the above case are treated as in § 12.

17. Foreign women marrying Russian subjects, and the wives of foreigners who have become Russian subjects, are admitted as Russian subjects without taking oath of allegiance. Widows and divorced wives retain the nationality of their husbands.

18. Special enactments relative to colonists, foreign agricultural laborers, Bulgarians, &c., remain in full force.

19. Foreigners admitted to Russian nationality are placed, in respect to their rights and obligations, on a perfect equality with born Russians.

20. Provides for the speedy transaction of business in connection with the adoption of Russian nationality.

B.—*Transitional measures.*

1. Foreigners who shall have already adopted Russian nationality may return at any time to their former nationality, on payment of all claims against them, whether government or private.

2. Those who throw off their Russian allegiance may either quit the country or remain in Russia, enjoying equal rights with other foreigners. They must provide themselves with national passports within a year, if resident in European Russia or belonging to a country in Europe, or within two years, if residing in Siberia, or having to obtain such passports in any other quarter of the globe. On the lapse of those dates, without production of passport, the foreigner must either leave the country or resume his Russian nationality.

3. Exceptions in cases of deserters and Asiatics.

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[1] Foe ix, vol. 1, p. 100. [2] For a full translation of this law, see the "Journal de St. Pétersbourg," inclosed in Lord Napier's No. 207, April 13, 1864. [3] Lord Napier, No. 186; March 30, 1864.

4. Annuls all enactments compelling Russian women married to foreigners to sell their immovable property in Russia, with the exception of certain kinds of property which, as foreigners, they still have no right to possess. With respect to the enactment concerning the payment of three years' dues and export duties by foreigners wishing to leave their Russian nationality, that law is abrogated in respect to those countries which shall adopt a reciprocity in such matters.

C. Abrogating law by which a foreigner was obliged to take an oath of allegiance prior to his marriage with a Russian woman, and by which he was required to ask permission of the Emperor to contract marriage with a Russian woman of the orthodox faith.

HAMBURG.

Aliens can become naturalized after six months' residence on payment of a small fee.

The law of Hamburg is said to recognize a double allegiance in persons thus naturalized, and does not require any renunciation of native allegiance.[1]

BELGIUM.

The law of Belgium is the same as that of France, except that the "grande naturalisation" can only be conferred by act of the legislature.[2]

SWITZERLAND.

According to a paper quoted before the Aliens Committee "in some cantons the acts of naturalization are granted by the legislature, in others by the executive government. In most cantons, among others in Berne, Zurich, Vaud, and Geneva, the privileges are complete and without any restriction from the date of the act. In Tessin a naturalized foreigner can only exercise the rights of citizenship after a lapse of five years from the date of his naturalization. In Thurgovie no one can hold any office in or under the government unless he has been a burgess of the canton at least five years. In St. Gall, Thurgovie, and Tessin a foreigner, in order to obtain his naturalization, must renounce his foreign rights of citizenship or allegiance."

(See also what Mr. Treitt says respecting the facility with which Swiss citizenship is acquired.)

ITALY.

LAWS OF THE TWO SICILIES.

By the civil code of the Two Sicilies provision was made both for naturalization and expatriation.

A royal decree of the 17th December, 1817, provided that special naturalization may be granted after one year's residence to any one who has rendered important service to the state, and ordinary naturalization after ten years' consecutive residence, on giving proof of means of subsistence and declaring intention to become domiciled in the kingdom.[3]

Expatriation followed on entry into a foreign military service, but the person expatriated still remained subject to the penal law if he re-entered the kingdom after having taken up arms against it.[4]

Permission was given to enter a foreign service on condition that the person to whom it was granted should not take any oath on accepting such service, except with a reservation that he should not be called upon to take arms against the Two Sicilies, and with the understanding that he should not be accredited to that country as embassador or minister.

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[1] Aliens Committee, p. 59. [2] Ibid. p. 53. Letter from Mr. Prevost, Swiss consul. Codice delle Due Sicilie, Art. 11. [4] Ibid. Article 25.

LAWS OF SARDINIA.[1]

The civil code of Sardinia of 1837, known as the "Codice Albertino," contains the following among other provisions respecting aliens:

"19. A child born abroad of a father who enjoys civil rights is also a subject, and exercises all the rights of one."

"24. A child born in the State of an alien who has established his domicile therein, with intent to remain permanently, is considered a subject."

"The intention to establish a permanent domicile is shown by an uninterrupted residence of ten years for other than commercial purposes."

"42. Aliens who have been naturalized lose the privileges of naturalization by an absence from the kingdom for one year without the King's permission."

CONSCRIPTION LAW.[2]

The army law of the Kingdom of Italy is very strict. (Regolamento sul Reclutamento dell' Esercito:" March 31, 1855.)

SEC. 21. The sons of an alien born within the State, who are comprised within the terms of the 24th article of the civil code, are considered as citizens, and must inscribe their names, or cause them to be inscribed, on the levy list of the communes in which they reside.

SEC. 22. Aliens and their sons who are admitted to enjoy civil rights, and are presumed to be citizens according to the civil code, are obliged to inscribe their names in like manner, unless the class to which they belong by age has furnished its contingent.

SEC. 23. Aliens who, according to the code, are considered citizens, or have been naturalized, must inscribe their names and satisfy the obligations of the levy, although they may be required for military service and maintained to be subjects of their native state.

SEC. 24. The sons of a naturalized citizen born before his naturalization must be inscribed on the list of their last place of residence in the state.

SEC. 25. Naturalization abroad, without the King's permission, does not exempt from the conscription, and the inscription of the name must be at the last place of residence within the state.

SEC. 26. Diplomatic and consular agents abroad to send to the minister of war every year lists of the citizens resident within their jurisdiction who are liable to the conscription.

Such persons to be warned that they are required to return to their native country to fulfill their obligations, under penalty of incurring the law for the punishment of contumacy.

Regulations made for persons residing in countries distant more than six hundred miles off, with certain reservations, and for the case of those who are undergoing legal punishment in a foreign country.

REVISED ITALIAN CODE.

By a decree of the 2d of April, 1865, the government was authorized to publish a new revised civil code for the Italian kingdom, and this code was accordingly prepared and came into operation on the 1st of January, 1866.

The code is of great interest and importance as being the last code published founded on the Code Napoléon.

It may therefore be supposed to contain all the additions and alterations which experience has proved requisite.

An official copy has been furnished by Sir A. Paget for use in this memorandum.[3]

The following is a translation of the provisions of the first book of the code:

"Of citizenship and the enjoyment of civil rights.

"1. Every citizen enjoys civil rights who has not been deprived of them by a penal sentence.

"2. Communes, provinces, civil and ecclesiastical establishments, and in general all legally recognized public bodies, are considered as personal, and enjoy civil rights according to the laws and usages of public right.

"3. An alien is admitted to enjoy the civil rights appertaining to citizens.

"4. The child of a citizen is a citizen.

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[1] "Lois Civiles et Criminelles" de M. Victor Foucher, vol. ix, Sardaigne. Code Civil. [2] Atti Ufficiali Leggi, Decreti, &c.," vol. v, part i, p. 292. [3] "Codice Civile del Regno d'Italia," lib. in. tit. 1.

"5. If the father has lost his citizenship before the birth of the child, the latter is reputed a citizen if he is born within the state and resides therein.

"Nevertheless, on becoming of age, according to the laws of the realm, he may elect to take the quality of an alien on making a declaration before the authorities of the civil state in which he resides, or, if in a foreign country, before the royal diplomatic or consular agents.

"6. The child born in a foreign country, of a father who has lost his citizenship before the child's birth, is reputed as alien.

"He can, however, elect to take the quality of a citizen on making a declaration as prescribed by the preceding article, and fixing his domicil in the kingdom during the year in which he makes such declaration.

"Nevertheless, if he has accepted public employment in the kingdom, or has served in the army or navy, or otherwise satisfied the requirements of the conscription, without seeking exemption as an alien, he shall be considered a citizen without further process.

"7. When the father is unknown, the child of a citizen-mother is a citizen.

"When the mother has lost her citizenship before the birth of the child the dispositions of the two preceding articles become applicable.

"If even the mother is unknown, a child born in the kingdom is a citizen.

"8. The child of an alien who has established his domicile within the kingdom uninterruptedly for ten years is considered a citizen; residence for commercial purposes is not sufficient to constitute domicile.

"The child can, however, elect to be considered an alien on making the declaration prescribed in article 5.

"When the alien has not established his domicile in the kingdom for ten years, the child is considered an alien; but the dispositions of the two first paragraphs of article 6 are applicable to the case.

"9. An alien woman who marries a citizen acquires citizenship, and preserves it even in widowhood.

"10. Citizenship is conferred on an alien, together with naturalization, by law or by royal decree.

"Royal decree will not be effectual unless it be registered by the proper civil authority of the state in the place where the alien intends to establish or has established his domicile, and unless an oath has been taken by him, before the said official, to be faithful to the King and to observe the statutes and laws of the realm.

"The registration must be effected within six months of the date of the decree, which will be otherwise annulled.

"The wife and minor children of an alien who has obtained citizenship become citizens on condition of their also establishing their residence in the realm, but the children can elect to take upon them the quality of aliens on making the declaration prescribed in article 5.

"11. Citizenship is lost—

"(1.) On renunciation by declaration before the proper civil authority of the province wherein the person resides and subsequent emigration to a foreign state.

"(2.) By naturalization in a foreign country.

"(3.) By accepting employment from a foreign state without previous permission of the Italian government, or by entry into the military service of a foreign power.

"The wife and minor children of one who has lost his citizenship become aliens, unless they have continued to reside within the realm.

"Nevertheless, the wife can re-acquire citizenship in the case and by the means stated in the second paragraph of article 14, and the children according to the second and third paragraphs of article 11.

"12. Loss of citizenship in the cases stated in the preceding article does not exempt from the obligations of military service, nor from the penalty inflicted on any one who bears arms against his native country.

"13. The citizen who has lost his citizenship for any of the reasons stated in article 11 will recover it—

"(1.) By returning to the realm with the special permission of the government.

"(2.) By renunciation of the foreign citizenship, employment, or military service acquired in the foreign country.

"(3.) By declaring before the proper civil authority of the state an intention to establish domicile within the realm, and by so *bona fide* establishing it within a year.

"14. A woman who is a citizen, and who marries an alien, becomes alien; since by the act of marriage she acquires the citizenship of her husband.

"On becoming a widow she recovers citizenship by residence within or return to the realm on declaring in either case, before the civil authority of the state, her intention to establish her domicile therein.

"15. The acquisition or restoration of citizenship in the cases aforesaid does not take effect until the day after that in which the required conditions and formalities are complied with."

In the articles of the code of which the foregoing is a translation, the expression "cittadinanza" is used to express citizenship; but it will be seen, on referring to article 10, a distinction is drawn between citizenship ("cittadinanza") and naturalization ("naturalità.")

This is owing to the fact that Italian citizenship, properly speaking, is local; the provinces being divided, for the purposes of conscription and taxation, into districts, within one of which every Italian is bound to have his name inscribed on the district lists.

This "cittadinanza," therefore, corresponds somewhat to the German "bürgerrecht," and as a local honorary privilege is conferred on distinguished persons, like our "city freedom."

Thus Garibaldi was presented with the "cittadinanza" of all the Italian towns.

The distinction is of no great importance, as, by article 1, "every citizen enjoys civil rights," but it may be worth mentioning.

SPAIN.

Extract from the Constitution of May 23, 1845.

PART I.—ARTICLE I.

"Spaniards are—

"1. All persons born within the dominions of Spain.

"2. The children of a Spanish father and mother, though born out of the dominions of Spain.

"3. Aliens who have obtained a certificate of naturalization.

"4. Those who, without having obtained such certificate, have acquired a domicile in any part of the mornarchy.

"The quality of a Spaniard is lost by naturalization in a foreign country or by admission to the employ of a foreign government without the royal license.

"The rights which aliens who may become naturalized or domiciled shall enjoy shall be determined by law."

Extracts from the royal decree of the 17*th of November,* 1852, *respecting aliens.*[1]

PART I.—CAP. I.

"Aliens are—

"1. All persons born of alien fathers without the Spanish dominions.

"2. The children of an alien father and Spanish mother born without the said dominions, unless they reclaim Spanish nationality.

"3. Children born within Spanish territory of alien fathers, or of an alien father and Spanish mother, unless they make such a reclamation as aforesaid.

"4. Children born without the Spanish dominions of fathers who have lost their Spanish nationality.

"5. A Spanish woman married to an alien.

"The national vessels are considered as part of the Spanish dominions without any distinction.

"ARTICLE 2. Aliens who have obtained a certificate of naturalization, or become domiciled in accordance with the law, are considered Spaniards.

"ARTICLE 3. All persons residing in Spain who have neither become naturalized nor settled therein are aliens *domiciled or transitory.*

"ARTICLE 4. A legal domicile is acquired by those who have established themselves with a settled habitation or fixed residence for the space of three years, with the possession of real property, or the exercise of some trade or profession or known mode of livelihood, in the Spanish territory, with the permission of the superior civil authority of the province.

"ARTICLE 5. Transitory aliens are those who have not acquired a fixed residence in the kingdom in the manner prescribed by the preceding article."

CAP. II.

"ARTICLE 8. A transitory alien who desires to become domiciled must request the necessary license from the superior civil authority of the province, with proofs of his having fulfilled the conditions required by article 4.

"ARTICLES 9, 10. Registries of transitory and domiciled aliens to be kept by governors of provinces and foreign consuls.

"ARTICLE 12. Those whose names are not inscribed in such registries are not legally entitled to the rights of aliens."

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[1] Collecion Legislativa de España, tomo lvii, p. 482.

"ARTICLE 18. Aliens may possess real property, exercise trades and professions, and share in all undertakings not expressly reserved by law to Spanish subjects.

"ARTICLE 21. Both transitory and domiciled aliens are subject to the payment of all imposts and taxes on the profits arising from their lands, commerce, or profession.

"ARTICLE 24. Both domiciled and transitory aliens and their children, who have not elected Spanish nationality, are exempt from military service.

"But this exemption does not extend to sons whose fathers have been born within Spanish territory, even though they retain their alien nationality."

PART IV.—CORRESPONDENCE BETWEEN THE UNITED STATES AND GREAT BRITAIN.

[*N. B.—The summary of this correspondence is omitted. It mainly relates to the doctrine of perpetual allegiance, which was abandoned by Congress in the act of* 1868, (15 *Statutes at Large*, 223,) *and which has also been abandoned by Great Britain and other powers with whom we have treaties of naturalization.*]

PART V.—CORRESPONDENCE BETWEEN THE UNITED STATES AND OTHER COUNTRIES.

PRUSSIA.

The principal correspondence has been with Prussia.

This correspondence is commenced in the United States Senate Documents, 1859–'60, (first session, Thirty-sixth Congress,) vol. ii, containing the papers laid before the Senate in compliance with a resolution of that House of the 2d of February, requesting information respecting the compulsory enlistment of American citizens in the army of Prussia.

The first paper of importance is a letter from Mr. Wheaton (the well-known jurist, who was at that time United States minister at Berlin) to Johann Knocke, a naturalized American, born in Prussia, who claimed exemption from military service on his return to that country.

"BERLIN, *July* 24, 1840.

"SIR: I have received your application, stating that you are a native-born subject of His Majesty the King of Prussia; that you emigrated to the United States in the year 1834, being then twenty-one years old, where you became naturalized as a citizen; that you have since returned to your native country, where you have been required to perform military duty, and desiring my official interference for your relief.

"In reply I have to state that it is not in my power to interfere in the manner you desire. Had you remained in the United States, or visited any other foreign country, (except Prussia,) on your lawful business, you would have been protected by the American authorities, at home and abroad, in the enjoyment of all your rights and privileges as a naturalized citizen of the United States. But, having returned to the country of your birth, *your native domicile and natural character* revert, (so long as you remain in the Prussian dominions,) and you are bound in all respects to obey the laws exactly as if you had never emigrated.[1]

"I am, &c.,

"HENRY WHEATON.

"Mr. JOHANN P. KNOCKE."

The correspondence now passes to the year 1851, when Mr. Barnard was United States minister at Berlin.

The first case is that of H. V. de Sandt, a Prussian by birth, who, after declaring his intention to become a United States citizen, had returned to Prussia, and whom the authorities at Cleves had ordered to leave that country.

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[1] United States Senate Documents, 1859–'60, vol. ii, p. 6.

In reply to a representation from Mr. Barnard, M. le Coq explained on behalf of the Prussian Government that Sandt had left with the idea of evading military service; that the proofs of his naturalization in the United States were incomplete, and that the order of the Cleves authorities would not be revoked.[1]

Upon this Mr. Barnard wrote to Sandt, (June 16, 1851.)[2]

"When you ceased to be a citizen of Prussia by your permit of emigration, and became a resident in the United States, the laws and Government of that country became your protection so long as that residence continued. When, however, you quitted your residence there before perfecting your naturalization and again took up your abode in Prussia for your own purposes, your position was a peculiar one, and required from you a peculiar and very discreet line of conduct. It was impossible for the American legation here to claim you as an American citizen."

Several other cases occurred in 1851–'52, which it seems unnecessary to give a detailed account of.[3]

Mr. Brandt arrested at Coblenz on the ground of being an emigration agent.

Mr. Dale, an American, imprisoned at Aix-la-Chapelle for having an informal passport:[4]

Mr. Behne summoned to military service.[5]

Dr. Gutowski, a Pole, of Posen, naturalized in the United States, who had returned to Prussia.[6]

Mr. Barnard informed Dr. Gutowski (August 3, 1852) that "having voluntarily returned to the country of your birth, where you have purchased a farm and taken up your residence, the Prussian government has a right to regard you as its subject, and so treat you in all respects."

Mr. B. Meyer, a native of Padeborn, fined 50 dollars on returning to Prussia, for having evaded military service by emigrating without a license.

It appears from a dispatch from Mr. Barnard to Mr. Webster[7] that the Prussian government was always at this time on the lookout for the German democratic propaganda and its agents, and that naturalized German citizens gave rise to suspicion by the ostentatious manner in which they flaunted their Americanism in the face of the authorities, Mr. Born, one of the most respectable of these persons, having demanded 20,000 rix-dollars for a detention of six or eight hours.

On the 29th of October, 1852, Mr. Bernard called the attention of Baron Mantueffel to the case of John Joseph Kracke, who had been forced into the army for three years' service.[8]

On the 14th of January, 1853, Mr. Everett furnished Mr. Barnard with instructions, of which the following is an extract:[9]

"The doctrine of inalienable allegiance is, no doubt, attended with great practical difficulties. It has been affirmed by the Supreme Court of the United States, and by more than one of the State courts; but the naturalization laws of the United States certainly assume that a person can, by his own acts, divest himself of the allegiance under which he was born and contract a new allegiance to a foreign power. But, until this new allegiance is contracted, he must be considered as bound by his allegiance to the government under which he was born, and subject to its laws; and this undoubted principle seems to have its direct application in the present cases. * * If, then, a Prussian subject, born and living under this state of the law, (of military service,) chooses to emigrate to a foreign country without obtaining the 'certificate' which alone can discharge him from the obligation of military service, he does so at his own risk. * * * For these reasons, and without entering into any discussion of the question of perpetual allegiance, the President is of opinion that if a subject of Prussia, lying under a legal obligation in that country to perform a certain amount of military duty, leaves his native land, and without performing that duty or obtaining the prescribed 'certificate of emigration,' comes to the United States and is naturalized, and afterwards, for any purposes whatever, goes back to Prussia, it is not competent for the United States to protect him from the operation of the Prussian law."

The doctrine thus laid down by Mr. Everett was communicated by Mr. Barnard to Baron Manteuffel on the 15th of February, 1853:[10]

"The Government of the United States considers that the laws of Prussia, which require a certain amount of military service of its subjects, and which prescribe the conditions in reference to this military service on which emigration is permitted, are a matter of domestic policy, in which no foreign government has a right to interfere. It considers also that, if a Prussian subject, born and living under this state of the law, emigrates to a foreign country without a compliance with those conditions, which alone can discharge him from the obligation of military service, he does so at his own personal risk. Going abroad under the burden of a duty still due to his native sovereign, his unauthorized emigration is in the nature of an escape from that duty and

[1] United States Senate Documents, 1859–'60," vol. ii, p. 9. [2] Ibid., p. 13. [3] Ibid., p. 14. [4] Ibid., p. 18. [5] Ibid., p. 23. [6] Ibid., p. 43. [7] Ibid., p. 41. [8] Ibid., p. 44. [9] Ibid., p. 53. [10] Ibid., p. 57.

from the laws which prescribe and enforce it, and he remains liable, in spite of any contract he may enter into in the mean time of new allegiance to a foreign power, to have these laws executed against him whenever he returns within the territorial limits and jurisdiction of his native country."

Baron Manteuffel, in his reply[1] of the 28th of February, says: "As, however, the Government of the United States considers that it is not for its interest to make the admission of an emigrant, as citizen, dependent on the exhibition of a document proving that he had dissolved the ties by which he was attached to his old country, it is much to be feared that difficulties will still occasionally rise.

"Rarely will the Prussian government refuse the subsidiary issue of an emigration permit to individuals who, in their infancy, were taken from His Majesty's territory by their parents, except in cases when there had been a judgment of a Prussian court against the applicant.

"At the close of your note of the 15th instant, you still quote section 23 of the law of the 21st of December, 1842. I permit myself to request you will notice, sir, that the term of ten years fixed for the return to Prussia of a subject of His Majesty only runs from the 1st of January, 1843; and that if said paragraph authorizes the government to consider an uninterrupted absence of more than ten years as importing the loss of the quality of a Prussian subject, it does not, nevertheless, dispense the absentee from duties which he ought to discharge while he was a Prussian."

Several more conscription cases are given in the Senate documents, but the next document of importance is a dispatch from Mr. Wright, (who had succeeded Mr. Barnard,) dated September 28, 1858, in which he states: "No American consul or minister can shield from impressment a United States citizen born in Prussia. Is it possible that there is no remedy for this state of things? My opinion is, that if a decided and firm stand be taken by our Government during the present peculiar position of affairs in Prussia, it will lead to good results. It is certainly worthy of a trial."

Mr. Wright having furnished the United States Government with information which he had procured from the Prussian government respecting the laws of enlistment and expatriation, (see laws of Prussia,) continued to urge the necessity of steps being taken to protect the interests of United States naturalized citizens; and on the 8th of July, 1859, Mr. Cass furnished him with instructions asserting the right of the United States to carry to much greater lengths than they had hitherto done the doctrine of the immunity from native allegiance and its duties conferred by foreign naturalization:[2]

"The right of expatriation cannot at this day be doubted or denied in the United States. The idea has been repudiated ever since the origin of our Government, that a man is bound to remain forever in the country of his birth, and that he has no right to exercise his free will and consult his own happiness by selecting a new home. The most eminent writers on public law recognized the right of expatriation. This can only be contested by those who, in the nineteenth century, are still devoted to the ancient feudal law with all its oppression. The doctrine of perpetual allegiance is a relic of barbarism, which has been gradually disappearing from Christendom during the last century."

Mr. Cass then argues that the United States expressly recognize the right of expatriation by requiring applicants for naturalization to take an oath renouncing their native allegiance:

"The moment a foreigner becomes naturalized, his allegiance to his native country is severed forever. He experiences a new political birth. A broad and impassable line separates him from his native country. He is no more responsible for anything he may say or do, or omit to say or do, after assuming his new character than if he had been born in the United States. Should he return to his native country he returns as an American citizen, and in no other character. In order to entitle his original government to punish him for an offense, this must have been committed while he was a subject and owed allegiance to that government. The offense must have been complete before his expatriation. It must have been of such a character that he might have been tried and punished for it at the moment of his departure. A future liability to serve in the army will not be sufficient, because before the time can arrive for such service he has changed his allegiance and become a citizen of the United States. * * * * In my letter to Mr. Hofer of the 14th ultimo I confine the foreign jurisdiction, in regard to our naturalized citizens, to such of them as 'were in the army or actually called into it' at the time they left Prussia, that is, to the case of actual desertion or a refusal to enter the army after having been regularly drafted and called into it by the government to which at the time they owed allegiance."

There is another dispatch from Mr. Cass to Mr. Wright, of the 12th of May, 1859, in the same sense, in which he remonstrates against a declaration of Baron Manteuffel "that from the existing laws of Prussia no former subject of the King, whatever his condition may be, has the right of claiming his re-admission into Prussia," as inconsistent with the rights of United States citizens under treaty with Prussia.[3]

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[1] United States Senate documents, 1858–'60, vol. ii, p. 1364. [2] Ibid., p. 133. [3] Ibid., p. 241.

"Under our treaty with Prussia there can be no doubt that American citizens who owe no service to Prussia, and have broken no Prussian law, have a right to visit and reside in Prussian territories without being in any way molested by the government."

The note from Baron Manteuffel here referred to is not published.

There is no further mention of the conscription of naturalized Americans in Prussia in the published correspondence until May 6, 1862,[1] when Mr. Seward writes to Mr. Judd that the question must be postponed until the United States and Prussia have been relieved from present anxieties.[2]

This dispatch was called forth by the release from the army, as an act of comity, of two naturalized Americans, for which Mr. Seward instructs Mr. Judd to thank the Prussian government.

In March, 1863, Mr. Seward wrote to Mr. Judd:[3] "Instances have occurred where Europeans who have become naturalized citizens of the United States have left the country when their services were required, and returned to Europe to avoid needful military duty here, and then have invoked the protection of the United States to screen them from military duty there. Henceforth you will make no further applications in these military cases without specific instructions."

Nor does anything on the subject appear in the papers relating to foreign affairs for 1864–'65.

Mr. Judd revived the controversy by calling Mr. Seward's attention, on the 9th of August, 1865,[4] to the position of naturalized Americans, many of whom, having acquired the rights of United States citizenship under the act of Congress by service in the United States Army, had returned to Prussia at the conclusion of the civil war and were now threatened with compulsory conscription.

Mr. Wright was re-appointed minister in September, 1865, and shortly afterward recommenced an agitation on behalf of naturalized Americans.

He reported to Mr. Seward that during that year at least five hundred naturalized[5] Americans had returned to Prussia, liable to military duty according to Prussian law; but that the Prussian authorities did not succeed in placing in the army one in a hundred.

As an instance he forwarded to Mr Seward a copy of a note from Baron Thile, stating that one Breiger a naturalized American, had been condemned to a fine of 50 thalers, or one month's imprisonment, for having left the country with intention of avoiding military duty; but that the Prussian government would allow him to make a short stay in Prussia, on submitting to the judgment and paying costs.

In November Mr. Wright had an interview with Count Bismarck,[6] who said that "it would be almost impossible to change by legislation the Prussian laws, in view of the prejudice among the German peasants that, as all Prussians are subject to military duty, the returning adopted citizens would be exempt," and added "that the subject could only be adjusted by some treaty arrangements with the United States."

As a basis for such an arrangement Count Bismarck suggested "exemption to all Prussian subjects returning to their native land who had left before their seventeenth year, and exemption also to all other persons who were not in the army or notified to enter at the time of leaving, and who shall have been out of the country for years."

Count Bismarck further suggested that such a treaty might be brought about by a Prussian proposal for a reconsideration of the extradition treaty of 1838, especially with regard to deserters; upon which the United States might make a counter-proposal for a convention on the subject of their naturalized citizens.

On the 2d day of December Mr. Seward[7] furnished Mr. Wright with the following instructions: "Considerations of ease and policy prevailed with this Department to allow the subject to rest during the continuance of the war. We became even less anxious upon the subject when it was seen that worthless naturalized citizens fled before the requirements of military service by their adopted Government here, and not only took refuge from such service in their native land, but impertinently demanded that the United States should interpose to procure their exemption from military service exacted here.

"Those circumstances, however, have passed away and the question presents itself in its original form. The United States have accepted and established a government upon the principle of the rights of men who have committed no crime to choose the state in which they will live, and to incorporate themselves as members of that state, and to enjoy henceforth its privileges and benefits, among which is included protection. This principle is recommended by sentiments of humanity and abstract justice. It is a principle which we cannot waive. It is not believed that the military service which can be procured by any foreign state in denial of this principle can be important or even useful to that state. The President desires that you will present the subject to the serious consideration of Count Bismarck. In doing so you will assure him

[1] Parliamentary Paper "North America," No. 2, 1862. [2] United States papers relating to foreign affairs, 1861–'62. [3] United States papers relating to foreign affairs, 1862–'63, vol. ii, p. 1020. [4] United States Executive Documents, 3d sess. 38th Congress, vol. iv. United States Diplomatic Correspondence, 1865, vol. iii, p. 60. [5] Ibid., p. 64. [6] Ibid., p. 66. [7] Ibid., p. 68.

* * that we shall be ready to receive and considor with candor any opinions upon the subject that the Prussian government may think fit to communicate, and any suggestions * * * relative to the extradition laws of the two countries."[1]

On the 16th of December Mr. Wright transmitted to Mr. Seward a memorandum with which he had been furnished by Baron Thile, showing the amendments which the Prussian government considered might be made in the extradition treaty, and adding:

"Advantages respecting the legislation on the nationality of Prussian subjects which could eventually be conceded to Prussian subjects who are or wish to become citizens of America:

"1. It would be granted that, after an absence of ten years from Prussia, not only the rights, but also the duties and obligations of a Prussian subject toward his native country cease to prevail. This is a principle which till now has been followed by Prussian authorities only in some isolated cases, but which has not been generalized nor is law in the country.

"2. The article 110 of the Prussian code says: 'Whosoever leaves Prussia with a view to avoid his enlistment in the royal army will be punished, either by a fine of 50 or 100 thalers, or by imprisonment from one month to one year.'

"An exception from this general rule might be introduced in favor of such individuals who leave Prussia before the age of seventeen years."[2]

On the 15th of January, 1866, the sentence on Breiger was annulled.[3]

In February Mr. Seward sent to Mr. Wright two letters from naturalized Americans in the Prussian army, and directed him to request their release as an act of favor.[4]

At an interview in March, Count Bismarck suggested, as a compromise, that seven years should be the term of absence to constitute expatriation, instead of ten, and remarked upon the impossibility of Prussia changing her laws on the subject of military duty. To abolish these laws, he said, would be plainly impracticable for a country situated like Prussia; while to relax their stringency in favor of American emigrants beyond the concessions (as he termed them, alluding to his protocol proposals) would not only amount to the practical abrogation of said statutes in case of all that had emigrated to the United States, or intended to do so in the future, but would be actually offering a sort of emigration premium to all able-bodied men who had attained the age when they might be called out for active service in the army.

Mr. Wright urged upon Mr. Seward to accept Count Bismarck's proposal.

Mr. Seward replied, April 9, 1866, that he would be happy to discuss the matter with Count Bismarck, but it must be in direct communication with the Prussian government, and not at second-hand; that he could not give a formal answer to an argument presented not in writing, but orally, and made known only by Mr. Wright's report.

The Austro-Prussian war gave rise to a great number of conscription cases. In most instances the offenders were either pardoned or let off with a fine.[5]

On the 24th of September, 1866, Mr. Wright reports, "There is some doubt whether the amnesty will embrace the cases of our adopted citizens who have been fined, during their absence, for neglect of military duty. Baron Roon, minister of war, will be adverse to our view of its construction. Count Bismarck will, if possible, extend its provisions to all such cases."[6]

On the same date Mr. Seward instructed Mr. Wright to "suggest to Count Bismarck the inquiry, whether it would not be deemed consistent now with the dignity and greatness of Prussia to recognize the principle of naturalization as a natural and inherent right of manhood. In reflecting upon the subject I am not able to believe that Prussia, any more than the United States, can or need to rely upon compulsory military service by subjects who have incorporated themselves as members of foreign states.

"Secondly, I know of no circumstances which would tend to place Prussia on an elevation so high among the modern nations as the adoption of that principle which lies at the basis of the American Republic."

This closes the published correspondence with Prussia on this subject.[7]

On the 22d of February, 1868, a treaty was signed at Berlin between the North German Confederation and the United States of America, consisting of six articles, of which the following are the most important:

1. Every subject of the North German Confederation naturalized in the United States of America, and having resided there during five years, shall be considered by the North German Confederation as an American subject, and treated as such. Every American citizen naturalized in the North German Confederation as an American subject, and having resided there five years, shall be considered by the Government of the United States of America as a German subject, and treated as such.

2. Every naturalized subject of either state, who may return to the land of his birth, cannot be prosecuted for any criminal offenses, unless they shall have been committed by him previously to his expatriation.

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[1] United States Diplomatic Correspondence, 1866, p. 2. [2] Ibid., p. 4. [3] Ibid., p. 6. [4] Ibid., p. 10. [5] Ibid., p. 47. [6] Ibid., p. 46. [7] Lord A. Loftus, No. 108, Feb. 22, 1868.

4. Every naturalized subject, who, having no intention of returning to the country of his adoption, resides continuously during two years in his former country, is presumed to have renounced his naturalization.

For this and other similar treaties see p. 149.

GERMAN STATES.

As the minor German states are now for the most part incorporated in the North German Confederation, it will probably be sufficient to reply to the correspondence without giving a summary of it:

Oldenburg, Senate documents, 1st session 36th Congress, vol. ii, pp. 129, 221; Hanover, ditto, p. 143; Frankfort, pp. 231, 235; Hamburg, p. 171. It appears from these latter papers that a system existed by which a citizen of Hamburg who wished to expatriate himself was required to procure a discharge ("austritt") from the "nexus," a law bureau appointed for the purpose.

This discharge was only given on proof being afforded that the applicant had fulfilled his military obligations. (Letter from syndic of Hamburg, June 18, 1850.)

Bremen, ditto, pp. 191, 195, 211. In a dispatch to Mr. Schleiden, of the 9th of April, 1859, Mr. Cass thus explains himself: "It is undoubtedly true that this Government has acquiesced in the opinion expressed by Mr. Wheaton, that when a citizen who has been liable to military duty leaves his own country without permission and without having performed this duty, and is naturalized in another country, he may be held to discharge his liability whenever he is found again in his native state. This opinion, however, is regarded by this Government as applying not to cases of inchoate liability, but to cases only where the liability has been complete."

This correspondence turned upon the question of the right of Bremen to surrender to another German state a naturalized American owing military duty to such state. The United States contended that such a surrender could not be acquiesced in; and Bremen maintained that there was a double duty to do it—1st, in virtue of the existing arrangements on the subject with the other states; and 2d, because a defaulter from military service in another state was a defaulter from the Federal army, of which the Bremen contingent formed a part.

AUSTRIA.

The laws of Austria regarding expatriation seem to have been sufficient to prevent any questions arising with regard to the conscription of naturalized Americans in the Austrian army; at all events no correspondence on the subject is published in the United States Congress papers.

There are, however, two cases in which the rights of subjects of the Austrian Empire naturalized in the United States have been discussed.

The first and best known is that of Martin Koszta.[1]

Martin Koszta, a Hungarian, was one of the refugees of 1848-'49. He went to Turkey, where he was arrested and imprisoned at Kutahieh, but released on condition of leaving the country.

He came to the United States, and made the usual declaration of intention to become naturalized.

He then returned to Turkey in 1853, and went to Smyrna, on commercial business, where he obtained from the United States consul a teskereh, (or traveling pass,) stating that he was entitled to American protection.

On the 21st of June, 1853, Kozta was seized by some persons in the pay of the Austrian consulate, and taken out into the harbor in a boat; they then threw him into the sea, and he was picked up by a boat from the Austrian man-of-war Hussar.

The United States consul went on board to remonstrate, but the captain of the Hussar persisted in retaining Koszta.

On being informed of the circumstances the United States chargé d'affaires at Constantinople requested the captain of the United States ship of war Saint Louis to demand Koszta's release, and, if necessary, to have recourse to force.[2]

The Saint Louis then went down to Smyrna, and the captain, in pursuance of his instructions, stated to the commander of the Hussar that unless Koszta was at once delivered to him he should take him by force of arms.

As such a conflict would have led to the destruction of the greater part of the shipping, and probably of the town, the French consul offered his mediation, and Koszta

[1] "Hertslet's State Papers," vol. xliv, p. 925-1042. Dana's edition of "Wheaton," note, p. 146. [2] "State Papers," vol. xliv, p. 935.

was then given over to his care to be kept until the decision of the respective Governments was ascertained.

The matter was eventually compromised by an arrangement being come to between the Austrian internuncio and the United States minister at Constantinople that Koszta should be shipped back to the United States, the Austrians reserving the right to proceed against him in case he returned to Turkey.

"Le gouvernement impérial se réserve cependant de procéder contre cet individu conformément à ses droits, dès qu'il serait surpris une autre fois sur le territoire ottoman."[1]

It is to be remarked that the Turkish government had protested against the invasion of their territorial jurisdiction by the Austrian consul and captain.[2]

On the 29th of August, 1853, the Austrian chargé d'affaires at Washington[3] presented a formal remonstrance to the United States Government, protesting against the claim of the United States to afford protection to Koszta, and urging them to disavow the conduct of their agents, and to grant reparation for the insult offered the Austrian flag.

Mr. Marcy replied on the 26th of September, 1853.[4]

In this note, which is of great length, Mr. Marcy gives a full account of the affair, and maintains the propriety of the course adopted by the United States minister, consul and captain, pointing out that, independently of the question whether Koszta was or was not entitled to American protection, the Austrians could have no right to seize him upon Turkish soil.

The following are some of the principal passages in which Mr. Marcy deals with the right of Koszta to United States protection:[5]

"There is great diversity and much confusion of opinion as to the nature and obligations of allegiance. By some it is held to be an indestructible political tie, and though resulting from the mere accident of birth, yet forever binding the subject to the sovereign; by others it is considered a political connection in the nature of a civil contract, indissoluble by mutual consent, but not so at the option of either party. The sounder and more prevalent doctrine, however, is, that the citizen or subject, having faithfully performed the past and present duties resulting from this relation to the sovereign power, may at any time release himself from the obligation of allegiance, freely quit the land of his birth and adoption, seek through all countries for a home, or select anywhere that which offers him the fairest prospect of happiness for himself and his posterity. * * * * The proposition that Koszta at Smyrna was not an Austrian subject can be sustained on another ground. By a decree of the Emperor of Austria of the 24th of March, 1832, Austrian subjects leaving the dominions of the Emperor without permission of the magistrate, and a release of Austrian citizenship, and with an intention never to return, become 'unlawful emigrants,' and lose all their civil rights at home.

"Mr. Hulsemann,[6] as the undersigned believes, falls into a great error, an error fatal to some of his most important conclusions, by assuming that a nation can properly extend its protection only to native-born or naturalized citizens. This is not the doctrine of international law, nor is the practice of nations circumscribed within such narrow limits. This law does not, as has been before remarked, complicate questions of this nature by respect for municipal codes. In relation to this subject it has clear and distinct rules of its own. It gives the national character of the country, not only to native-born and naturalized citizens, but to all residents in it who are there with, or even without, an intention to become citizens, provided they have a domicile therein. Foreigners may, and often do, acquire a domicile in a country, even though they have entered it with the avowed intention not to become naturalized citizens, but to return to their native land at some remote and uncertain period, and whenever they acquire a domicile, international law at once impresses upon them the national character of the country of that domicile. It is a maxim of international law that domicile confers a national character; it does not allow any one who has a domicile to decline the national character thus conferred; it forces it upon him often very much against his will, and to his great detriment. International law looks only to the national character in determining what country has the right to protect. If a person goes from this country abroad, with the nationality of the United States, this law enjoins upon other nations to respect him, in regard to protection, as an American citizen. It concedes to every country the right to protect any and all who may be clothed with its nationality."

Mr. Marcy then quotes several authorities to show what constitutes domicile:[7]

"As the national character, according to the law of nations, depends upon the domicile, it remains as long as the domicile is retained, and is changed with it. Koszta was therefore vested with the nationality of an American citizen at Smyrna, if he, in contemplation of law, had a domicile in the United States." * * "There may be a reluctance in some quarters to adopt the views herein presented relative to the doctrine of domicile and consequent nationality, lest the practical assertion of it might in some

[1] "State Papers," vol. xliv, p. 1015. [2] Ibid., p. 971. [3] Ibid., p. 972. [4] Ibid., p 984. [5] Ibid., p 987. [6] Ibid., vol. xliv, p. 996. [7] Ibid., vol. xliv, p. 998.

instances give a right of protection to those who do not deserve it. Fears are entertained that this doctrine offers a facility for acquiring a national character which will lead to alarming abuses; that under the shadow of it political agitators, intent upon disturbing the repose of their own or other countries, might come to the United States with a view to acquire a claim to their protection, and then to return to their former scenes of action, to carry on, under a changed national character, their ulterior designs with greater security and better success. This apprehension is believed to be wholly unfounded. The first distinct act done by them toward the accomplishment of these designs would disclose their fraudulent purpose in coming to and seeking a domicile in this country. Such a development would effectually disprove the fact that they acquired a domicile here, and with it our nationality."[1]

SIMON TOUSIG.

This case further elucidates and explains the doctrine of domicile advocated by the United States in the affair of Martin Koszta.

Tousig, a subject of Austria, had acquired a domicile in the United States, but was not naturalized, and voluntarily returned to Austria with a passport from the American Department of State. He was arrested on charge of offences committed before leaving Austria. He appealed to the United States minister for protection, who laid the case before the State Department. Mr. Marcy replied on the 10th of January, 1854:[2]

"I have carefully examined your dispatches relating to the case of Simon Tousig, and regret to find that it is one which will not authorize a more effective interference than that which you have already made in his behalf. It is true he left this country with a passport issued from this Department; but as he was neither a native-born nor naturalized citizen, he was not entitled to it. It is only to citizens that passports are issued.

"Assuming all that could possibly belong to Tousig's case—that he had a domicile here, and was actually clothed with the nationality of the United States—there is a feature in it which distinguishes it from that of Koszta. Tousig voluntarily returned to Austria and placed himself within the reach of her municipal laws. He went by his free act under their jurisdiction, and thereby subjected himself to them. If he had incurred penalties or assumed duties while under these laws, he might have expected they would have been enforced against him, and should have known that the new political relation he had acquired, if indeed he had acquired any, could not operate as a release from these penalties. Having been once subject to the municipal laws of Austria, and while under her jurisdiction violated those laws, his withdrawal from that jurisdiction, and acquiring a different national character, would not exempt him from their operation whenever he again chose to place himself under them."

BAVARIA.

Mr. Attorney-General Black,[3] in the case of Amthor, a Bavarian, naturalized in the United States, who returned to Bavaria, gave an opinion, in 1857, admitting the right to renounce the citizenship of naturalization and resume that of birth, by an actual and *bona fide* return with family and property and a change of permanent domicile. Mr. Black said that no mode of renunciation was prescribed; but, as the right was admitted, if the fact and intent coincided and were sufficient to satisfy the Government of the United States, and Bavaria treated Amthor as a citizen, he could not claim the rights of a citizen of the United States or invoke its protection.

FRANCE.

The first of the papers in this correspondence presents another phase of the American doctrine.[4]

"DEPARTMENT OF STATE, *Washington, June* 1, 1852.

"SIR: I have to acknowledge the receipt of your letter to Mr. Reddall, of the 28th ultimo, inquiring whether M. Victor B. Delpierre, a native of France, but a naturalized citizen of the United States, can expect the protection of this Government in that country when proceeding thither with a passport from this Department. In reply, I have to inform you that if, as is understood to be the fact, the Government of France

[1] State Papers, vol. xliv, p. 1,000. [2] Lawrence's Appendix to "Wheaton," ed. 1863, p. 929. Cong. Doc., 33d Congress, 1st sess. H. R. Ex. Doc. No. 41. [3] Dana's "Wheaton," sec. 5, p. 144. [4] Senate Documents 1859-'60, vol. ii, p. 55.

does not acknowledge the right of natives of that country to renounce their allegiance, it may lawfully claim their services when found within French jurisdiction.

"I am, &c.,

DANIEL WEBSTER.

"J. B. NINES, Esq., *New York.*"

LUCIAN ALIBERT.

This case has already been referred to in M. Treitt's report.[1]

Alibert was a native of Digne, Basses Alpes. He went to the United States in 1838, at the age of 18, and, after going through the usual formalities, was naturalized in 1846. In 1852 he returned to France and was arrested while on a visit to Dignes as an "insoumis" of 1839, and pleaded his naturalization as exempting him from service. The United States consul at Marseilles applied to the general commanding the district, who informed him that Alibert's claim was founded in right, if his naturalization was really dated in 1846, as his naturalization would incapacitate him from serving in the French army, and the date of it would prove that more than three years had elapsed since the offense was committed, (that being the period of limitation required by the penal code,) and that he could not consequently be proceeded against for insubordination. Nevertheless Alibert was brought before a "conseil de guerre" at Marseilles, and condemned to a month's imprisonment.

The cause was then brought by appeal before a superior military court at Toulon, and the sentence quashed, thereby establishing Alibert's immunity from conscription.

MICHEL ZEITER.

In 1859 Mr. Cass[2] directed the United States minister at Paris to procure information on the French law of naturalization, &c., and at the same time instructed him as follows: "This Government maintains the right of expatriation and naturalization, and maintains also that if a foreign-born citizen naturalized here returns to his native country, he is not liable to military duty, except such as was actually due and which he had been called upon to perform before his emigration. In any communication you may have with the minister for foreign affairs you will make known to him these views of the United States."

Accordingly, when the case of Michel Zeiter arose in 1860, Mr. Faulkner made a communication in this sense to M. Thouvenel:[3] "Our doctrine is that the naturalized emigrant cannot be held responsible upon his return to his native country for any military duty the performance of which has not been actually demanded of him prior to his emigration. A prospective liability to service in the army is not sufficient. The obligation of contingent duties depending upon time, sortition, or events thereafter to occur, is not recognized. To subject him to such responsibility, it should be a case of actual desertion or refusal to enter the army, after having been actually drafted into the service of the government to which he at the time owed allegiance."

The case of Michel Zeiter is so fully explained in M. Treitt's report, and in the copy of the judgment of the provincial court in Addenda F, that it is unnecessary to say anything more about it here.

President Buchanan referred to these cases in his message to Congress of the 3d of December, 1860:

"With France, our ancient and powerful ally, our relations continue to be of the most friendly character. A decision has recently been made by a French judicial tribunal, with the approbation of the Imperial government, which cannot fail to foster the sentiments of mutual regard that have so long existed between the two countries. Under the French law no person can serve in the armies of France unless he be a French citizen. The law of France recognizing the natural right of expatriation, it follows as a necessary consequence that a Frenchman by the fact of having become a citizen of the United States has changed his allegiance and has lost his native character. He cannot therefore be compelled to serve in the French armies in case he should return to his native country. These principles were announced in 1852 by the French minister of war, and in two late cases have been confirmed by the French judiciary. In these, two natives of France have been discharged from the French army because they had become American citizens. To employ the language of our present minister to France, who has rendered good service on this occasion, 'I do not think our French naturalized fellow-citizens will hereafter experience much annoyance on this subject.' I venture to predict that the time is not far distant when the other continental powers will adopt the same wise and just policy which has done so much honor to the enlightened government of the Emperor. In any event our government is bound to protect the rights of our naturalized citizens everywhere, to the same extent as though they

[1] Senate Documents, 1859-'60, vol. ii, p. 176. [2] Ibid,. p 198. [3] Lawrence's Appendix to "Wheaton," p. 928.

had drawn their first breath in this country. We can recognize no distinction between our native and naturalized citizens."

The next published correspondence is in 1866 respecting the cases of MM. Schneider, Cochener, Todry, and Pierre.[1]

These persons were all naturalized in the United States, and had returned to France with American passports.

The cases were all alike. The men were severally arrested as "insoumis" on their arrival within their native communes, and detained for some time in prison, with more or less rough usage, until the local tribunals decided on their claims for exemption.

They were all eventually discharged.

The United States minister at Paris, Mr. Bigelow, remonstrated in strong terms against these proceedings, and M. Drouyn de Lhuys in each case replied that the complainants must prove their claims to exemption in the usual manner, citing the case of Zeiter to show the impartiality with which such applications were dealt with.[2] If François Pierre had been an American by birth, or a citizen of the United States under other circumstances, his passport would certainly have protected him from prosecution for the offense in question; but when a person "returns to his native country with foreign naturalization papers, it is not just to lay aside his nativity and admit his new nationality as protecting him by retroactive effect, contrary to every principle of law, against former acts, and particularly against offenses of which he was guilty, a Frenchman, as in the present case. His presence in his native country obliges him to explain his case by the laws of the land, and as long as he has not done that he is considered to have preserved his primitive citizenship."

M. Drouyn de Lhuys,[3] however, suggested at an interview on the 28th of April, 1866, that naturalized Americans should be directed to proceed at once on returning to France to the *mairie* where their names were enrolled, and to claim exemption from the conscription, and get their names removed from the list.

Mr. Seward,[4] on the 7th of May, 1866, instructed Mr. Bigelow to urge on the French government that an American passport should be considered sufficient proof of nationality, and that if a person representing himself to be an alien were conscribed, the military tribunals should decide summarily on his claims to exemption; and if they decided against him, the matter should be at once submitted to the government for diplomatic discussion.

SPAIN.

In communicating to Congress the papers respecting the imprisonment, in Cuba, of Mr. John S. Thrasher,[5] a native American, domiciled in that island, who had been condemned to eight years' imprisonment for assisting Lopez' expedition, Mr. Webster stated, "The first general question then is, as to his right to exemption from Spanish law and authority on the ground of his being a native-born citizen of the United States.

"The general rule of the public law is that every person of full age has a right to change his domicile; and it follows, that when he removes to another place, with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile; and this is so notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period. * * * * * *

"In questions on this subject the chief point to be considered is the *animus manendi*, or intention of continued residence; and this must be decided by reasonable rules and the general principles of evidence.

"If it sufficiently appear that the intention of removing was to make a permanent settlement, or a residence for an indefinite time, the right of domicile is acquired by a residence even of a few days. * * * * * *

"It is undoubtedly true that an American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be treated unjustly, he would have a right to claim that protection. * * * * But his situation is completely changed when, by his own act, he has made himself the subject of a foreign power. * * * * * *

"But, independently of a residence with the intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance, it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and

[1] United States Diplomatic Correspondence, 1866, Part I, p. 291. [2] United States' Senate Documents, vol. ii, p. 302. [3] Ibid., p. 299. [4] Ibid., p. 304. [5] President's message, December 23, 1851. Executive Documents, 1 sess. 32d Congress, vol. iii, No. 10.

may be punished for treason or other crimes, as a native-born subject might be unless his case is varied by some treaty stipulations; but this duty of obedience to the laws, arising from local and temporary allegiance, ceases, of course, the moment he transfers himself back to his original country. * * * * * * * * Our citizens who resort to countries where trial by jury is not known, and who may there be charged with crime, frequently imagine, when the laws of those countries are administered in the forms customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their own government. * * * * They have chosen to settle themselves in a country where jury trials are not known, where the privilege of the writ of *habeas corpus* is unheard of, and where judicial proceedings in criminal cases are brief and summary. Having made this election they must abide its consequences.

"No man can carry the ægis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws, and the sovereign power of that country, unless he be authorized so to do by the virtue of treaty stipulations."

In case of Ignacio Tolen, a native of Spain, but naturalized in the United States, Mr. Webster (June 25, 1852,) said,[1] "If that government (Spain) recognizes the right of its subjects to denationalize themselves and assimilate with the citizens of other countries, the usual passport will be a sufficient safeguard to you; but if allegiance to the Crown of Spain may not legally be renounced by its subjects, you must expect to be liable to the obligations of a Spanish subject, if you voluntarily place yourself within the jurisdiction of that government."

In 1860 a case occurred at Havana, of Sabino de Liaño, a native of Spain naturalized in the United States, being arrested as a conscript.[2]

In reply to the representations of the United States consul, the captain-general informed him that by a royal decree of the 17th of November, 1852, "the foreigner obtaining naturalization in Spain, as well as the Spaniard obtaining it within the territory of another power, without the knowledge and authorization of his respective government, shall not exempt himself from the obligations which were consequent to his primitive nationality, although the subject of Spain may in other respects lose the quality of Spaniard, conformably to what is prescribed in article 1 of the constitution of the monarchy."

Eventually, the proceedings taken against Mr. Liaño were suspended, and a bond which he had entered into to provide a substitute canceled by the governor-general.[3]

DENMARK.[4]

A Dane named Boie Smidt,[4] who had visited the United States and declared his intention of naturalizing, having, on his return to Copenhagen in September, 1859, been arrested and impressed into the Danish navy, the United States minister demanded his release.

The Danish government replied,[5] that "if it should turn out, upon an investigation, that the said Mr. Smidt, when he signified his intention to be naturalized in the United States, was, under the laws of the country, bound afterwards to perform his military service in his native country," the laws then in force would not admit of his release.

The United States minister rejoined[6] that "it is a settled doctrine of the Government which I have the honor here to represent, as I understand it, that a naturalized citizen of the United States, from and after the date of his naturalization, both at home and abroad, is placed on the very same footing with a native citizen, with the exception that none but a native citizen can occupy the office of President or Vice-President of the United States; and the Government will be disposed to extend to the one class of citizens the same protection which justly belongs to the other, at all times and in all places."

Mr. Smidt got tired of performing military duty in a fortress while his case was being discussed, and procured a substitute.

The United States minister then asked either for the discharge of the substitute, or the refund of money paid by Mr. Smidt for engaging him.

It does not appear how the matter ended.

RUSSIA.

In July, 1864, the Russian minister at Washington informed Mr. Seward that,[7] according to existing laws of Russia, every foreigner who becomes a subject of Russia

[1] Halleck's 'International Law," chap. xxix, p. 698. [2] Senate documents, 1859-'60, vol. ii, p. 224. [3] United States Senate documents, vol. ii, p. 228. [4] Ibid, p. 203. [5] United States Senate documents, vol. ii, p. 204. [6] Ibid., p .205. [7] Executive documents of the House of Representatives, 1864-'65, vol. iii. part iii, p. 301.

and at a later time renounces this character, is obliged to pay before his departure the equivalent for the taxes for three years, and some other imposts, to obtain the right to export his property.

"The imperial government has stated to me that, under a new regulation, the subjects and citizens of powers by whom the dues above mentioned are not enforced, will be exonerated therefrom."

Mr. Seward replied that no such impost was levied in the United States.

On the 31st of January, 1866, Mr. Seward[1] directed Mr. C. M. Clay, the United States minister at St. Petersburg, to do what he could, should it be deemed advisable, to procure the release of a Russian Pole, Benjamin Goldberg, a naturalized citizen of the United States, who was said to have been arrested and forced into the Russian army.

No further papers respecting this case are published.

On the 14th of July, 1866, Mr. Clay reports:[2]

"I am informed that Stanislaus Pongoski, a Russian Pole and naturalized citizen of the United States, has been proved to have become our fellow-citizen without leave of the Emperor of Russia, and by the article 367 of the penal code he has been deprived of all the rights of Russian citizenship and banished forever from the Russian Empire, and this sentence has been put into execution. I don't see that we can complain, as it settles the question of denaturalization virtually in our favor, and avoids unpleasant issues."

Mr. Seward, in reply, says that he is "glad to see that the Russian government has accepted that important principle definitively. Certainly there is no cause of complaint to the proceeding on our part, provided that Pongoski does not feel himself aggrieved.

"The case may, perhaps, demand careful examination if it shall turn out that the decree of perpetual exclusion thus pronounced against an admitted American citizen was based upon no other ground than his having voluntarily accepted that character under the Constitution and laws of the United States. In the mean time we may presume that political or other offenses entered into the merits of the decree."

COSTA RICA.[3]

In December, 1865, Mr. Riotte[3] reported to Mr. Seward that "young men from this republic go to the United States, remain there for a short time, obtain, by means of hard swearing and an inexcusable levity on the part of the court, letters of naturalization, upon which they return for good to their native country, or leave the United States for other parts; and all this for the sole purpose of making this citizenship a bar against the enforcement of whatever obligation by their native or any other government. * * * I think it bad that clerks of courts, too, are authorized to grant such papers, and it is not made the exclusive duty and privilege of courts in open session, which would certainly prevent a good deal of false swearing. But the main difficulty is, in our large cities two witnesses can be got at any moment, and very cheap, to swear to anything; that the persons hunting up such witnesses have, as a matter of course, made up their minds beforehand to commit perjury; that there is no officer bound to look after the interest of the United States in such cases, and that the judges or clerks, instead of requiring two good, substantial witnesses, (they ought to know them personally,) seem to be satisfied with almost any class of witnesses."

Messrs. Francisco and Juan Quezada, who had obtained naturalization under such circumstances, appealed to their American citizenship to protect them from the Costa Rica conscription.

The Costa Rican authorities[4] could not, "even for a moment, admit that a Costa Rican naturalized in a foreign country continues that character after having returned to the country with the implicit intention to live in it;" but agreed to consult Mr. Riotte.

Mr. Riotte refused to interfere, first, because Messrs. Quezada had become redomiciled in Costa Rica, and, secondly, as he stated to them, "even assuming, for argument's sake, that you were still citizens of the United States, there is another consideration which is not to be lost sight of in deciding upon your second request. A law of Costa Rica (of December 2, 1850,) imposes upon every citizen the obligation to serve in the army. You had not complied with that duty previous to your adoption as American citizens; and it is the enforcement of that very duty which has brought out your claim to the United States citizenship. Now, I know well that the claim of an adopted citizen's native country to the fulfillment of his military duty toward that country, and the extent of that claim, was, and is at this moment, a mooted question between the Government of the United States and several European monarchies. Until that question is decided, however, I can scarcely fail if I adopt the view of one of our greatest statesmen, when he answered an adopted citizen, in a case perfectly the same as yours,

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[1] Diplomatic Correspondence, 1866, part i, p. 391. [2] Ibid., p. 416. [3] United States Diplomatic Correspondence, 1866, vol. ii, p. 430. [4] Ibid., 431.

'But, having returned to the country of your birth, your native domicile and national character revert, and you are bound to obey the laws exactly as if you had not emigrated.'"

On the 16th of February, 1866, Mr. Seward wrote to Mr. Riotte, "The proceedings you have adopted, and the decision you have arrived at in the premises, are approved."

The irregular proceedings by which Costa Ricans and others obtain certificates of naturalization in the United States without any intention of residing there, to which Mr. Riotte thus called attention, are referred to in the recent report of the Committee on Foreign Affairs of the House of Representatives.

[*N. B.—In addition to the foregoing résumé in the appendix to the royal commissioner's report, reference is made to the following correspondence, printed in connection with Lord Tenterden's résumé, under the direction of the Secretary of State.*]

Baron Lederer to Mr. Fish.

[Translation.]

WASHINGTON, *November* 21, 1872. (Received Nov. 23.)

The SECRETARY OF STATE:

I hastened to transmit to the imperial royal government the note which you were kind enough to address me about the nationality of one François A. Heinreich, and by which you informed me that, in accordance with the Constitution of the United States and the laws in force here, every individual born on their territory is considered their citizen.

The imperial royal minister of the interior, to whom this communication was submitted, has just declared that the principle stated above cannot be applied by the imperial royal government to the case of François A. Heinreich, who, being legally an Austrian subject, has consequently been called upon to fulfill his military duties.

The imperial royal minister of foreign affairs has approved this decision for the following reasons:

François A. Heinreich was born in New York in 1850, where his parents were temporarily established, as is shown, Mr. Secretary, by a passage in the note which you did me the honor to send me, and which states expressly that François A. Heinreich is "a person born in New York of persons who were foreign subjects."

The parents of the said François were not naturalized during their stay in the United States; they therefore wanted the necessary conditions to entitle them to consideration as citizens of this republic, as was stipulated in Article 1 of the treaty of naturalization, signed on the 20th September, 1870, between Austria, Hungary, and the United States.

It results that their son, François A. Heinrich, who by his birth should be of the nationality of his parents, in conformity to Articles 4 and 28 of the Austrian civil code, and to the general principles of personal law, is an Austrian citizen. For François A. Heinreich returned to Austria as a minor of about two or three years of age, where he has remained for twenty years without having fulfilled any of the duties of the nationality of which he now desires the protection in order to evade his military service in Austria.

On the contrary, during this time he has enjoyed the rights of an Austrian citizen. In 1866 and 1867 he was furnished with passports with which he traveled under the protection of the imperial and royal authorities in his quality of Austrian subject.

The isolated fact, that once he found the means to have a passport delivered to him by the consul of the United States at Stuttgart, in Würtemberg, should not be a reason to prejudice the question of his nationality.

In accordance with the order of my government, I make you acquainted, Mr. Secretary, with the above-mentioned reasons which have led it to consider François A. Heinrich as an Austrian subject, and I avail myself of the present occasion, &c.

LEDERER.

Mr. Fish to Baron Lederer.

DEPARTMENT OF STATE,
Washington, December 24, 1872.

SIR: The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note which His Excellency the Baron Lederer addressed to him on the 21st day of November, and has given very careful consideration to the facts with reference to the nationality of François A. Heinrich therein set forth.

Baron Lederer brings to the knowledge of the undersigned, for the first time, the important fact that Heinrich had, on more than one occasion, availed himself of Austrian protection, and traveled as an Austrian subject under an Austrian passport.

This fact, in connection with the provisions of the treaty signed on the 20th of September, 1870, induced a reconsideration of the question, and of the opinion which had been expressed without the information conveyed by Baron Lederer's note with regard to Heinrich's nationality.

The whole question has been submitted to the examination of the Attorney-General, who is of opinion that, inasmuch as the treaty above referred to provides that citizens of either country (the Austro-Hungarian monarchy and the United States) who have resided in the territories of the other uninterruptedly for five years, and during such residence have become naturalized citizens of the other country, are to be treated as such; and while, as a general rule, a person born in this country, though of alien parents who have never been naturalized, is under the laws of the United States deemed a citizen of the United States, that the treaty clearly recognizes the right of an American citizen to change his nationality and become a subject of Austria.

Applying these views to the case of François Heinrich, the Attorney-General, in view of the statements in the note of Baron Lederer, that under the laws of Austria a foreign-born child of Austrian parents takes the nationality of the latter, and is regarded as an Austrian, and that François Heinrich has at different periods obtainted passports from the Austrian government and traveled under their protection as an Austrian subject, taken in connection with the length of time during which he has resided in Austria, thinks these circumstances may be viewed as a sufficient manifestation of consent on his part, at those periods especially, to be a member of that nation; and that such consent co-oper-

ating with the law of Austria, to which reference has been made, (by which he says it would seem children of Austrian parents born abroad are naturalized at their birth,) and accompanied, moreover, by continued residence in that country, effected a complete change in his nationality from American citizenship to Austrian citizenship.

The Attorney General concludes by saying, that, in view of all the facts and circumstances appearing in this case, he is of the opinion that, under the provisions of the aforesaid convention, François A. Heinrich should be held by the United States to be an Austrian subject, and treated as such; that he is not an American citizen, and consequently not entitled to protection from this Government.

Following this opinion of the Attorney-General, the undersigned has the honor, in reply to the question addressed to him by Baron Lederer, in his note of the 6th of April last, to say that François A. Heinrich is not, and will not be, regarded as a citizen of the United States so long as he remains within the jurisdiction of the Austro-Hungarian dominion.

The undersigned avails, &c.,

HAMILTON FISH.

Mr. Williams to Mr. Fish.

DEPARTMENT OF JUSTICE,
Washington, December 21, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, inclosing a copy of a communication from Baron Lederer, of the 21st ultimo, and presenting for my consideration the following case:

One François A. Heinreich, now resident in Austria, was born in the city of New York in 1850, of Austrian parents, who were then temporarily residing in that city, but who never became naturalized. The family returned to Austria when François was about two or three years old, taking him with them; and he has resided there since the return of his parents to that country. It is stated that at one time François obtained a passport as a citizen of the United States from the American consul at Stuttgart, in Würtemberg. It is also stated that in 1866 and 1867 he was furnished with Austrian passports, under the protection of which he traveled in the quality of an Austrian subject.

François is now called upon to render military service in Austria, but claims to be exempt therefrom on the ground that he is an American citizen; and he desires this Government to protect him in that claim. The Austrian government, however, denies that he is an American citizen, and insists that he must be considered an Austrian subject. Upon the above state of facts my opinion is requested as to whether the said François is a citizen of the United States and entitled to protection. The first article of the convention of September 20, 1870, between the United States and the Austro-Hungarian monarchy, reads as follows:

"Citizens of the Austro-Hungarian monarchy who have resided in the United States of America uninterruptedly at least five years, and during such residence have become naturalized citizens of the United States, shall be held by the government of Austria and Hungary to be American citizens, and shall be treated as such. *Reciprocally, citizens of the United States of America who have resided in the territories of the Austro-*

Hungarian monarchy uninterruptedly at least five years, and during such residence have become naturalized citizens of the Austro-Hungarian monarchy, shall be held by the United States to be citizens of the Austro-Hungarian monarchy, and shall be treated as such. The declaration of an intention to become a citizen of the one or the other country has not, for either party, the effect of naturalization."

As a general rule, a person born in this country, though of alien parents who have never been naturalized, is under our law deemed a citizen of the United States by reason of the place of his birth, (10 Opin., 321, 328, 329; and see also section 1 to the fourteenth amendment to the Constitution.) But the article of the convention just quoted—the right of an American citizen to change his national character, and become a citizen of Austria—is clearly recognized; but it is required that he shall have had a residence of five years in that country, besides being naturalized there, before the United States are bound to consider and to treat the person so naturalized as an Austrian citizen. In the case under consideration, therefore, though the said François is a native of this country, and as such was originally clothed with American nationality, yet, he having resided in Austria uninterruptedly far beyond the period mentioned, the question submitted resolves itself practically into this inquiry, whether during that time he has acquired Austrian citizenship?

It would seem from the communication of Baron Lederer that, under the law of Austria, a foreign-born child of Austrian parents takes the nationality of the latter, and is regarded as an Austrian citizen. Assuming this to be correct, and I am satisfied it is, a doubt might be suggested whether political duties or burdens (such as military service) could rightfully be imposed by that country upon a person who by birth is a citizen of this country, without his consent, or without his assuming the character of, or signifying by some act or declaration his will to be, a citizen of the former country. But the facts presented relieve the case before me of any difficulty of this sort. The circumstance that the said François has at different periods obtained passports from the Austrian government, and traveled under their protection as an Austrian subject, taken in connection with the length of time during which he has resided in Austria, may, I think, be viewed as a sufficient manifestation of consent on his part, at those periods especially, to be a member of that nation.

Now, there can be no question that such consent, co-operating with the law of Austria, to which reference has been made, (by which, as it would seem, children of Austrian parents born abroad are naturalized at their birth,) and accompanied, moreover, by continued residence in that country, effected a complete change in his nationality from American citizenship to Austrian citizenship. Having once acquired the latter, it cannot reasonably be maintained that his Austrian nationality, or the political obligations appertaining thereto, may be cast aside by him at pleasure so long as he continues to reside within the jurisdiction of Austria.

I have not overlooked the fact that François once obtained a passport from an American consul at Stuttgart. This is unimportant except so far as it is indicative of a preference in regard to nationality, and I consider it overbalanced by the circumstances above adverted to, and the further circumstance that from the return of his parents to Austria up to the present time his domicile or residence appears to have remained in that country.

In view of all the facts and circumstances appearing in this case, I am of the opinion that, under the provisions of the aforesaid conven-

tion, François A. Heinreich should be held by the United States to be an Austrian citizen, and treated as such; that he is not an American citizen, and consequently not entitled to protection from this Government.

I am, &c.,

GEO. H. WILLIAMS.

Hon. HAMILTON FISH,
Secretary of State.

Mr. Washburne to Mr. Fish.

No. 758.] LEGATION OF THE UNITED STATES,
Paris, January 31, 1873. (Received February 14.)

SIR: Since the adoption of the recent military law in France the government is holding every person owing military service to a strict obligation. Numbers of Frenchmen by birth, naturalized American citizens, are coming over here, and if it is thought that they owe service, they are at once arrested for what is called "insoumission," and thrown into prison. Application is then made to us to get them discharged.

Under the ruling of the French government, if it should appear that the party has been naturalized for over three years, it is held that such "insoumission" is covered by prescription, and after many delays and much suffering and expense he is released. But in cases where the party has not been naturalized for this length of time he is adjudged guilty of "insoumission;" they refuse to set him at liberty, and he is subjected to the punishment which the law of the country prescribes.

This matter does not seem to be perfectly understood by our naturalized French citizens, and they appear to consider that an American passport protects them against everything.

I have thought that you might consider it well to let it be known through the Associated Press what the true state of the case is, that these people may be put on their guard, and not return to their native country and subject themselves to arrest, and perhaps punishment.

This whole matter is fully discussed in your circular dated Washington, May 2, 1871.

We have had no less than three of these cases since my return, and only one of the parties has been naturalized the requisite length of time.

I have, &c.,

E. B. WASHBURNE.

Mr. Washburne to Mr. Fish.

No. 784.] LEGATION OF THE UNITED STATES,
Paris, March 18, 1873. (Received April 9.)

SIR: Since the passage of the new military law in France many questions must arise in regard to persons claiming to be citizens of the United States. As every Frenchman is now held to military service, applications are being made to the legation by young men who have been treated and considered as Frenchmen to declare themselves Americans and to receive American passports. The last case is that of Madame

Pepin, who applies on behalf of her son, a young man eighteen years of age, to have some papers from the legation stating that he is an American citizen, and is to be protected as such. His case is as follows: John Pepin, the husband and father, was a Frenchman by birth. When a young man he emigrated to the United States, was educated in Kentucky, and became a naturalized citizen, residing in New Orleans. In 1850 he returned to France, leaving some property in New Orleans, which is still held by his family, he having died several years ago. After his return to this country he married a French woman, by whom he had a daughter, now twenty years of age, and the son above spoken of. He never returned to the United States to live, but made France his residence up to the time of his death. The boy in question has never been to the United States, though the mother and daughter went there two years ago, and the mother obtained a passport from the State Department as an American citizen. She says that the boy got a passport two years ago from the United States minister in London, but that he had lost it.

The question arising from this state of facts is, whether this son is a citizen of the United States, and the Government bound to protect him as such, and particularly against the claim of the French government for military service. My own judgment is, that he has no right to claim protection as a citizen of the United States, and that our Government is not called upon to intervene in his behalf. I have therefore declined to do anything in the matter, unless under special instructions from you.

There is another case in regard to which I would like to have your opinion: A man and his wife, Americans by birth, came to Paris forty years ago, and have lived here ever since. This has become their permanent home, and they have never had any intention of returning to the United States. Several of their children have been born here, and have never been to the United States, and never expect to go, and never want to go. The question is, are these children citizens of the United States, and is the Government of the United States bound to protect them as such?

I have, &c.,

E. B. WASHBURNE.

Mr. Fish to Mr. Washburne.

No. 511.] DEPARTMENT OF STATE,
Washington, June 28, 1873.

SIR: In your No. 784 you invite instructions from the Department respecting two cases, stated by you in the following language:

I. Madame Pepin applies, in behalf of her son, a young man eighteen years of age, to have some paper from the legation stating that he is an American citizen, and is to be protected as such. His case is as follows: John Pepin, the husband and father, was a Frenchman by birth. When a young man he emigrated to the United States, was educated in Kentucky, and became a naturalized citizen, residing in New Orleans. In 1850 he returned to France, leaving some property in New Orleans, which is still held by his family, he having died several years ago. After his return to this country he married a French woman, by whom he had a daughter, now twenty years of age, and the son above spoken of. He never returned to the United States to live, but made France his residence up to the time of his death. The boy in question has never been to the United States, though the mother and daughter went there two years ago, and the mother obtained a passport from the State Department as an American citizen. She says that the boy got a passport two years ago from the United States minister in London, but that he has lost it.

II. A man and his wife, Americans by birth, came to Paris forty years ago, and have lived here ever since. This has become their permanent home, and they have never had any intention of returning to the United States. Several of their children have been born here, and have never been to the United States, and never expect to go, and never want to go.

You also state that—

Many questions must arise in regard to persons claiming to be citizens of the United States. As every Frenchman is now held to military service, applications are being made to the legation by young men who have been treated and considered as Frenchmen to declare themselves Americans.

This seems to make it advisable not only to dispose of the particular cases set forth in your dispatch, but also to invite your attention to certain general considerations which may be useful in determining future cases.

The fourteenth amendment to the Constitution declares that—

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.

Every person, therefore, who, in the first place, is entitled to claim the right of citizenship, by reason of birth within the jurisdiction of the United States, or by reason of naturalization therein, whether under the laws of the General Government or by the operation of treaties for the annexation of territory, and who, in the second place, adds to that natural or acquired title the fact of a personal subjection to their jurisdiction, is constitutionally entitled to be recognized as a citizen, with all the consequences which may follow from such recognition. But the two concurrent circumstances must exist in every case in order to make the constitutional right complete.

It is, however, by no means to be assumed that Congress and the several legislatures which assented to the fourteenth amendment contemplated that a temporary withdrawal of the person of the citizen from subjection to national jurisdiction should forfeit the rights of citizenship. Such a construction would do violence to common sense; to the customs of Americans, who, from the foundation of this Government, have been in the habit of residing in foreign countries, and engaging in commerce there, retaining their nationality; and to the general jurisprudence of nations, which recognizes such a residence as consistent with the preservation of nationality. The relations of such a citizen to the Government before the passage of the fourteenth amendment were described by Chief Justice Marshall in language which this Department adopts as equally applicable to his present status. "The American citizen," he says, "who goes into a foreign country, although he owes local and temporary allegiance to that country, yet, if he performs no other act changing his position, is entitled to the protection of our Government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor would be considered a justifiable interposition. But his situation is completely changed where, by his own act, he has made himself the subject of a foreign power. Although this act may not be sufficient to rescue him from punishment for any crime committed against the United States, a point not intended to be decided, yet it certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance." (2 Cranch, p. 119.)

It seems to this Department that the individual right of expatriation which was thus referred to by Chief Justice Marshall is recognized by that clause of the fourteenth amendment to the Constitution which makes subjection to the jurisdiction of the United States an element of citizenship. This conclusion is strengthened by the simultaneous action of Congress.

The fourteenth amendment passed Congress "on or about the sixteenth of June, in the year one thousand eight hundred and sixty-six," (15 St. at Large, p. 706,) in the form of resolution to be proposed to the legislatures of the several States. On the 20th day of July, A. D. 1868, my predecessor, Mr. Seward, made the official announcement that the proposal had received the requisite number of ratifications, and had become a part of the Constitution of the United States. (Ib.) On the 27th day of the same July the Congress of the United States enacted a law, in the preamble of which they declared that "the right of expatriation is a natural and inherent right of all people," and in the body of which they enacted "that any declaration, instruction, opinion, order, or decision of any officer of this Government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this Government." (15 St. at Large, p. 223.)

Congress did not then define (nor has it since defined) what may constitute expatriation. The Department is, therefore, in its general instructions, forced to look elsewhere for an enumeration of the acts which may certainly be regarded as expatriating a citizen of the United States, so far as to disqualify him from appealing to the authorities of the United States for protection.

Mr. Justice Marshall, speaking for the Supreme Court, has said in the extract above quoted, that when a citizen "has made himself a subject of a foreign power his situation is completely changed." This judicially-pronounced opinion of one of the most illustrious of my predecessors has been and is a recognized rule for the guidance of this Department.

This proposition is too plain to need further discussion. There are cases, however, resembling those referred to in your dispatch, in which doubts may possibly arise, cases in which the voluntary expatriation is to be inferred, not from an open act of renunciation, but from other circumstances, as, for instance, a residence in a foreign land so constant, and under such circumstances, that a purpose of a change of allegiance may be reasonably assumed.

In regard to such cases I have to say that the right to be acknowledged as a citizen of the United States must be held as a high privilege and a precious right. When the person who possesses it is untainted by crime, or by the suspicion of expatriation, or by the non-fulfillment of the duties which accompany it, it entitles him abroad to the recognition and protection of a power which is not the least among the powers of the earth, while at home, under general regulations of law, he may participate in the distribution of political rights and privileges, he may enjoy the national guarantees of liberty and of protection to personal property, and he may share the advantages of education and the healthful social and moral influences which result from democratic institutions.

It is provided by the act of 1855 (10 St. at Large, p. 604) that persons born out of the limits and jurisdiction of the United States, whose fathers at the time of their birth are citizens of the United States, shall be deemed and considered to be citizens of the United States, provided that the right of citizenship shall not descend to persons whose fathers never resided in the United States.

I will presently refer to this proviso.

Within the sovereignty and jurisdiction of the United States the persons contemplated by the act are entitled to all the privileges of citizenship; but while the United States may by law fix or declare the conditions constituting citizenship within its own territorial jurisdiction, and may confer the rights of American citizenship everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it may be safely assumed that Congress did not contemplate the conferring of the full rights of citizenship upon the subject of a foreign nation who had not come within our territory, so as to interfere with the just rights of such nation to the government and control of its own subjects.

It is a well-established principle of public law that the municipal laws of a State have no effect within the limits of another power beyond such as the latter may think proper to concede to them.

No foreign state can by its municipal legislation release from his obligation to the United States a person born within its territory and its jurisdiction who has continued from his birth to reside therein; and while he resides therein, and if, by the laws of the country of their birth, children of American citizens born in such country are subjects of its government, the legislation of the United States should not be construed so as interfere with the allegiance which they owe to the country of their birth while they continue within its territory, or until they shall have relieved themselves of that allegiance and have assumed their rights of American citizenship, in conformity with the laws and Constitution of the country, and have brought themselves personally within its jurisdiction.

I have above referred to the proviso to the act of 1855. It is evident from this that the law-making power not only had in view the limit (above referred to) to the efficiency of municipal law in foreign jurisdiction, but intended that a distinction be observed between the rights of citizenship declared by the act of 1855 and the full citizenship of persons born within the territory and jurisdiction of the United States, for those declared to be citizens by the act could not transmit citizenship to their children without having become residents within the United States; the heritable blood of citizenship was thus associated unmistakeably with residence within the country, which was thus recognized as essential to full citizenship.

The provisions of the fourteenth amendment of the Constitution have been considered. This amendment is not only of more recent date, but is a higher authority than the act of Congress referred to, and if there be any conflict between them, or any difference, the Constitution must control, and that makes the subjection of the person of the individual to the jurisdiction of the Government a requisite of citizenship.

It does not necessarily follow from this that the children of American parents born abroad may not have the rights of inheritance, and of succession to estates, although they may not reside within or ever come within the jurisdiction of the United States. That question is not within the present consideration.

But if the citizen, on the one side, has rights which he may claim at the hands of the Government, on the other side there are imperative duties which he should perform toward that Government. If, on the one hand, the Government assumes the duty of protecting his rights and his privileges, on the other hand the citizen is supposed to be ever ready to place his fortune and even his life at its service, should the public

necessities demand such a sacrifice. If, instead of doing this, he permanently withdraws his person from the national jurisdiction, if he places his property where it cannot be made to contribute to the national necessities; if his children are born and reared upon a foreign soil, with no purpose of returning to submit to the jurisdiction of the United States, then, in accordance with the principles laid down by Chief Justice Marshall, and recognized in the fourteenth amendment, and in the act of 1868, he has so far expatriated himself as to relieve this Government from the obligation of interference for his protection.

The Executive Department of the Government has had occasion to consider this question in negotiating and concluding treaties on the subject of naturalization. Thus it has been agreed with Bavaria, with Hesse, with Mexico, with North Germany, and with Würtemberg, that the residence of a naturalized citizen in the land of his nativity, without intent to return to the United States, shall work of itself a renunciation of his naturalization, and that such an intent may be held to exist where the residence is continuous for more than two years.

This Department would not assume to decide that in such cases as are referred to in your dispatch a continuous residence in a foreign country of two or even of many years should of itself work an expatriation. Expatriation is a fact to be established, like any other fact, by external evidence, and such continuous residence, even for a life-time, is capable of being explained on other theories than that of a voluntary denationalization. But when the fact is once established, by whatever proof, it would, in the opinion of this Department, operate to place the expatriated person outside the number of those who can claim the protection of this Government as a right.

The duty of protection as toward the citizen, or the right of its exercise as toward the foreign power, is not always correlative with the fact of citizenship. Thus it was demonstrated by my predecessor, Mr. Marcy, that an extreme case may arise in which a government will be justified in taking upon itself the protection of persons who are not citizens. On the other hand, it is apparent that there may be instances of claims to citizenship which is nominal only, if it have any existence, as where the duties of citizenship have never been performed, where the person of the individual has never been within the national jurisdiction, or is voluntarily removed from it, and purposely kept beyond it; where his movable wealth is purposely placed where it may never contribute to the national necessities, and his income is expended for the benefit of a foreign government, and his accumulations go to swell its taxable wealth; and where from all the surrounding circumstances it must be assumed that he has abandoned the United States, and never intends to return to it.

It cannot be contended that a person with so faint an exercise of the duties of citizenship is entitled to claim the protection of this Government as a right.

Each case as it arises must be decided on its own merits. In each the main fact to be determined will be this, has there been such a practical expatriation as removes the individual from the jurisdiction of the United States?

If there has not been the applicant will be entitled to protection.

Continuous absence from this country does not necessarily presume expatriation. It has always been held to be consistent with a purpose of returning; and in the case of a natural-born citizen, or of a naturalized citizen, so residing in any country, except the country of his nativity,

this Department would require its agents to extend the protection of the Government to all citizens, except in the presence of strong affirmative proof of a purpose of expatriation. But when a naturalized citizen returns to his native land to reside, the action of the treaty-making power above referred to would seem to require that such agents be jealous and scrutinizing when he seeks their intervention. Even in such case the purpose of not renouncing the adopted citizenship might be manifested and proved in various ways, such as the payment of an income-tax when such a tax was imposed, the maintenance of a domicile, and the payment of taxes on personal property within the United States, or other affirmative action.

It is the duty of the diplomatic and consular agents of the United States to listen to all facts which may be produced tending to exclude the presumption of expatriation, and to give to them the weight to which in each case they may be entitled.

The particular cases referred to in your dispatch are easily determined on the facts as you state them.

Pepin, the son of a naturalized Frenchman who returned to France and died there, was never in this country. It is alleged that he obtained an American passport from the legation in London some two years since; but it is not produced, and thus leaves him without any one of the *indicia* necessary to show an intent on his part to assume the duties of citizenship as well as the privileges granted by the act of 1855.

Excepting the alleged application for the passport in London, it would seem quite possible that, were it not for his desire to avoid the performance of duties required by French law, he would perhaps never have dreamed of calling himself an American, that he would remain in France and avoid all duties to the United States, that he would call himself a citizen of the United States and avoid all duties to France.

In the other case, an American, whose name is withheld, has lived with his family forty years in France, has reared his children there, has never proposed to return to the United States, and his children have never been to the United States, and never expect to go, and never want to go.

In each of these cases there is a presumption of a purpose of expatriation so strong that, until it can be rebutted to your satisfaction, you will be justified in concluding that the persons respectively are not entitled to your intervention to protect them against the operation of the laws of the country which they have selected as their place of residence.

I am, &c.,

HAMILTON FISH.

[Telegram—Received March 22.]

Mr. Beardsley to Mr. Fish.

ALEXANDRIA, EGYPT, *March* 20, 1873.

Leopold Ungar, born Bavarian, naturalized American 1856; passport 1857, last visé 1862; returned Europe 1861; since business various countries, including Prussia, returning often to America; according to his statement, last 1871; arrived here from Italy under assumed name and false passport; arrested by Prussians as fraudulent bankrupt;

American papers found in his trunk. Dispatch from Cologne police says Ungar domiciled there since 1862; denied by Ungar, but offers no proof. Convention of 1868 relied upon; Ungar's lawyer contends same not applying, convention not retroactive, citing Savigny's International Law; claims my active assistance for Ungar's release. I believe Ungar has forfeited American citizenship, not having claimed it for eleven years, so far as his papers show. What shall I do?

Important.

BEARDSLEY.

[Telegram.]

Mr. Fish to Mr. Beardsley.

WASHINGTON, *March* 22, 1873.

Your telegram leaves it impossible to decide whether Ungar is or is not entitled to American protection.

If an American citizen commits a crime in a foreign country and escapes thence to another foreign country, between which and that wherein the offense was committed there exists an extradition for offenses such as that charged, his citizenship does not afford ground for the American representative to do more than to see that his reclamation and extradition are properly made and conducted.

FISH.

Mr. Beardsley to Mr. Fish.

No. 76.] AGENCY AND CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA AT ALEXANDRIA, EGYPT,
Cairo, March 24, 1873. (Received April 23.)

SIR: On or about the 12th instant an individual calling himself Laurent Uferland, German by birth and Jew by faith, arrived at Alexandria from Italy, with a pass to visit Egypt, granted by the Ottoman minister at Rome. The moment he disembarked from the steamer he was arrested by orders of the Prussian consul-general, on the charge of having committed fraudulent bankruptcy at Cologne, and placed in the local prison of Moharrem Bey, a prison where only European prisoners are confined.

After he was arrested he claimed to be a naturalized citizen of the United States, and stated that his true name was Leopold Ungar, and not Laurent Uferland. His trunk, containing a large amount of jewelry and precious stones, and all his papers, were taken possession of by the Prussian consulate, but he had managed to secrete many precious stones about his person, sewn into the lining of his coat, by the aid of which he secured the services of an English attorney.

I went to Alexandria on the 15th instant, and on the following day but one, that is to say on the 17th instant, the prisoner's attorney called upon me and informed me that a person claiming to be an American citizen was in the local prison of Moharrem Bey, having been placed there by the Prussian consulate.

The United States frigate Wabash, bearing the flag of Admiral

Alden, arrived at Alexandria on the same day, (the 17th,) and all my time until the evening of the following day was occupied with the admiral. I however instructed my dragoman to visit Ungar in prison and ascertain if he had an American passport. The following evening my dragoman reported that he had visited Ungar, who informed him that all his papers, including his American passport, were in the possession of the Prussian consul-general. My dragoman had then gone to the Prussian consul-general and asked to examine Ungar's papers. He was shown the passport alluded to, as well as the false passport obtained at Rome. The American passport was dated 1857, and last viséd in 1862.

Ungar, however, assured my dragoman that if he could see me he could prove that he was not a citizen of Prussia. Having no official knowledge of Ungar's having been placed in prison by the Prussian consulate-general, and desiring to bring the case officially forward, on the morning of the 19th I caused an official note to be addressed to the director of the prison, requesting him to send to the United States consulate-general the prisoner, Leopold Ungar, claiming to be an American citizen. Of course this was a formal and perfectly regular proceeding for the purpose of obtaining an official statement from the director of the prison that Ungar was imprisoned by orders of the Prussian consul-general as a Prussian subject. On receipt of such a statement I would have immediately written to the Prussian consul-general to the effect that, having requested the release of a prisoner claiming to be an American citizen, I had been officially informed by the director of the prison that the said prisoner was confined, by his orders, as a Prussian subject, and requesting that the prisoner be publicly examined for the purpose of determining his citizenship. The letter to the director of the prison was sent by the hands of the *cawass* of the consulate-general, and I was preparing my letter to the Prussian consul-general, when, to my utter astonishment, the prisoner walked into the consulate, under a guard from the prison.

It appears that, in the absence from the prison of the director, the letter was handed to the jailer, who at once sent the prisoner to the consulate under guard. This individual appeared in the office a few minutes later, and claimed that he could not read, and had supposed the order came from the Prussian consulate. I have no doubt, however, but that the jailer was bribed by the prisoner.

I at once determined to examine Ungar in order to satisfy myself, if possible, as to his political status. Under oath he stated that he was born in Bavaria in 1831; went to California in 1849; completed his naturalization, and received his papers in 1856; obtained a passport, and returned to Europe in 1857. Since then he has been in business in various parts of Europe, principally in Cologne, where he was at one time a merchant, at another time photographer, and finally, since 1867, a member of the firm of Marius & Co., engaged in speculating in lottery-tickets. The latest visé on his passport is 1862, and he cannot prove that he has been in the United States since 1857. Certainly he has had no legal domicile there, unless for a few months. His family, that is to say, his father and mother, live at Cologne, and he has made that his home for five years at least.

When Ungar fled from Cologne he carried with him about $20,000 worth of precious stones and jewelry, much of which had, according to his own confession to me, been obtained by fraud. He traveled under the name of Laurent Uferland, and at Rome obtained from the Otto-

man minister a pass to come to Egypt. The moment he set foot on Egyptian soil he was arrested by the Prussian consul-general, with the consent of the Egyptian authorities.

During Ungar's examination I received a letter from the director of the prison, saying that the prisoner had been released by mistake, and begging me to send him back to prison as he was responsible for him to the Prussian consul-general. You will readily perceive that the position was embarrassing. If Ungar had come to Egypt under his true name, and with his American passport, I would have protected him at all hazards, and the question would have been one of extradition. But he proclaimed his American citizenship only after he was in the hands of the Prussian authorities. In Egypt the fiction of exterritoriality exists, and Ungar was virtually still on Prussian territory. When, however, he appeared in the United States consulate he was on United States soil, and if a citizen of the United States, he was theoretically entitled to all the protection of our Government. But was he a citizen of the United States? Certainly not, if the fourth article of the treaty of 1868 between the United States and Germany applied to his case. If that article only applies to those who may have become citizens of either country after the ratification of the treaty, then Ungar would be still held to be a Prussian citizen by Prussia, who, until the ratification of the said treaty, did not admit the right of her citizens to denaturalize themselves.

So long as he remained in Prussia, or under Prussian authority, he would be regarded entirely as a Prussian subject. The moment, however, he reached the United States, he would be invested with full citizenship and entitled to all its benefits. Would the fact, however, of his having reached the United States consulate-general at Alexandria, under the circumstances above described, entitle him to invoke the official power of our Government in his behalf? I think not. It might as against Prussia, but the Egyptian government, who had Ungar in charge, must be considered.

After I had examined Ungar I had an interview with the Prussian consul-general, Mr. De Jasmond, and examined all of Ungar's papers. No papers of any kind were found indicating that he had been in America since 1857. Among other documents shown me by Mr. De Jasmund was the declaration of the police authorities of Cologne that Leopold Ungar had, on the 25th of February, 1867, demanded the right of legal domicile in the city of Cologne, and that from that time until the end of the year 1872 he had his domicile and continued residence in that city.

I was satisfied in my own mind that Ungar had no claim whatever upon my official assistance, except in so far as his having accidentally reached the consulate of the United States; and I was also satisfied that on broad grounds of international justice I ought not to hold him against the demands of the Egyptian authorities. I concluded that my proper course to pursue would be to send him back to prison, protesting against his being delivered to any authority until the question of his nationality had been definitely settled. Before final action, I went on board the Wabash and stated the case fully to the admiral, who entirely agreed with me in my view of the case and in my proposed action. I then returned to the consulate and sent Ungar back to prison with a letter to the director of the prison of the nature above indicated.

The following day, the 20th, I sent you a telegram, forwarded at 3 o'clock p. m., a copy of which I herewith inclose, (No. 1,) and yesterday, the 23d, at 2.30 p. m., your answer arrived at Alexandria, a copy of which I also inclose, (No. 2.)

On the 21st I came to Cairo with Admiral Alden and his staff, but expect to return to Alexandria the latter part of this week, when I will report any new features of Ungar's case which may arise, and forward you, if possible, evidence to prove that Ungar's domicile for five years has been at Cologne.

I am informed that our naturalized American citizens residing at Alexandria have severely criticised my action in sending Ungar back to prison after he had once reached the consulate. They argue as though Ungar was a political martyr and should be protected at all hazards. You must perceive how completely Ungar's case is divested of all political features, and how little calculated it is to arouse the sympathies of honest people.

If I have succeeded in making this case clear to you, I have to request that you will approve or disapprove of my actions. If you disapprove of them, I will consider it a favor if you will indicate in what particular I was wrong. I should add that there is no extradition treaty between Egypt and the North German Confederation, but the former is only too anxious to deliver up criminals escaping to her shores, and always affords active assistance in such cases.

I will also explain that, even had I desired to hold Ungar after he had reached the consulate, I had no prison and no police. The Egyptian prison would not have received him as my prisoner, because he had just escaped from it as a Prussian subject, and the admiral could not receive him on the flag-ship for the purpose of screening him from the just punishment of his crimes.

This case has appeared plain to me from the beginning, but all those connected with the consulate-general have counseled me to action which would have involved a serious conflict of authority, at least between the United States and the Egyptian authorities.

I am, &c.,

R. BEARDSLEY,
Agent and Consul-General.

Mr. Fish to Mr. Beardsley.

No. 55.] DEPARTMENT OF STATE,
Washington, April 28, 1873.

SIR: Your dispatch No. 76, of the 24th ultimo, relative to the case of Leopold Ungar, has been received. In reply I have to state that, supposing him to have been duly naturalized, it is manifest, from the facts which you state, that as he has never discharged any duty of a citizen of the United States, and probably lived abroad during the whole of the late civil war, he has morally if not legally forfeited all claim to interference in his behalf by this Government.

If, however, he should be charged with an offense against Prussian law for which his extradition for trial in Prussia may be granted, as our treaty with Prussia as well as that with Great Britain does not exempt us from surrendering even native citizens who, in such cases, may seek refuge at home, we cannot properly object to the giving up of Ungar by the government of a foreign country. Your course on the occasion is approved.

I am, &c.,

HAMILTON FISH.

Mr. Fish to Mr. Beardsley.

No. 69.] DEPARTMENT OF STATE,
Washington, June 30, 1873.

SIR: Your dispatch No. 90, of the 30th of April last, relative to the case of Leopold Ungar, has been received. It is apprehended that your zeal to protect the supposed rights of that person as a citizen of the United States may have influenced you not to allow due weight to the fact that jurisdiction over him appears to have been claimed by the German consul-general, not alone or chiefly because he was an alleged Prussian subject, but because he was charged with the commission of a criminal offense at Cologne. As you had proof of that charge, if he had even been a native of this country this fact alone should not have led you to resist his extradition, unless there should have been ground to suppose that the charge was a mask to get possession of Ungar for a political offense.

In an elaborate letter, addressed to the chairman of the Judiciary Committee of the House of Representatives on the 24th of June, 1864, by my predecessor, Mr. Seward, the following propositions were set forth as applicable to cases arising under general international law and not regulated by treaty:

1. That "the object to be accomplished in all these cases [of extradition] is alike interesting to each government, namely, the punishment of malefactors, the common enemy of every society. While the United States affords an asylum to all whom political differences at home have driven abroad, it repels malefactors and is grateful to their government for undertaking their pursuit and relieving us from their intrusive presence."

2. That the sole elements of consideration upon which the Executive "is to determine whether or not a proposed case of extradition should or should not call forth the exercise of this power [the power of extradition] and duty under the law of nations and the precepts of humane and Christian civilization," are "the traits of the alleged criminality, as involving heinous guilt against the laws of universal morality and the safety of human society, and the gravity of the consequences which will attend the exercise of the power in question, or its refusal."

It is expected that these carefully considered views of the Department will govern and regulate the action of all its subordinates. As the United States would not desire to retain such malefactors within their borders, so they do not think it right to have the power of their name used to shield such in the territories of friendly powers, any further than may be necessary to insure to the persons accused of crime the fair preliminary hearing which may satisfy an impartial magistrate that there is just cause to believe that the accused has committed the crime with which he is charged, and which may also satisfy the representative of the United States that the charge is not put forth for the purpose of getting possession of the person of a political offender.

Under the circumstances, your right to the copy of papers which you demanded of Mr. Jasmund may be deemed so questionable that the Department will not address to the German government a complaint for his refusal thereof.

I am, &c.,

HAMILTON FISH.

Mr. Schlözer to Mr. Fish.

IMPERIAL GERMAN LEGATION,
Washington, September 8, 1873.

The Imperial German consul-general at Alexandria, Egypt, caused in March last a certain Leopold Ungar, prosecuted by the court at Cologne for fraudulent bankruptcy, to be arrested and surrendered to the judge of first instance at Cologne.

On being arrested Ungar asserted that he was an American citizen, and, through his lawyer, Twiney, of Alexandria, asked the intervention of the American consul-general at that place.

The latter protested against his arrest on the ground that Ungar had on the 18th day of July, 1856, acquired the rights of a citizen of the United States, and that he had received an American passport in the year 1857.

This objection could not be considered valid by the German government, for the following reason: Ungar was born in Bavaria, of Prussian parents, June 10, 1831, and was consequently a Prussian subject in the year 1850, when he emigrated to America.

In the United States he did, indeed, as above remarked, acquire the right of citizenship in July, 1856, but returned to Prussia in 1862, became a permanent resident of Cologne in 1867, received at his own request a permit to reside there from the chief of police April 7, 1867, commenced business there under the name of J. C. Merges, and never gave the slightest evidence of an intention to return to America.

Under these circumstances the imperial government thought itself justified in drawing the inference, in view of article 4 of the treaty concluded February 22, 1868, with the United States, that Ungar had renounced his American citizenship.

Mr. Twiney, the lawyer, has indeed claimed that this treaty can have no retroactive force as regards Ungar, but the imperial government is unable to concur with this view of the case; for, as Germans who emigrated to America *before* the conclusion of the treaty are entitled to claim its benefits, so must this instrument have a retroactive force as regards Americans who emigrated to Germany before its conclusion.

To this is added, in the present case, the circumstance that Ungar resided in Cologne uninterruptedly for five years *after* the conclusion of the treaty. Paragraph 3 of article 4 of the treaty is, therefore, incontestably applicable to him.

At his departure from Alexandria, Ungar left six boxes (or chests) containing valuables and articles of virtu in the care of the American consul-general. These are now in the custody of Mr. Twiney.

After it had been decided that the property of Ungar should go to satisfy the claims of his creditors so far as possible, the competent Prussian court ordered the boxes aforesaid to be surrendered for this purpose. Twiney, however, refuses to give them up, on the ground that he considers Leopold Ungar as an American citizen.

For the settlement of this matter it is therefore now a matter of necessity for the court in question to obtain an acknowledgment from the Government of the United States that Leopold Ungar is a Geman subject.

In obedience to instructions received from his government, the undersigned, imperial German envoy, has the honor most respectfully to request the honorable Hamilton Fish, Secretary of State of the United States, to examine this case, and, if he shall concur with the view of

the German government, to send to the legation a recognition of Leopold Ungar as a German subject.

The undersigned begs the honorable Secretary of State, at the same time, in case such recognition shall be sent, to be pleased to inform the American consul-general at Alexandria accordingly.

The undersigned is happy to avail himself of this occasion to renew to the honorable Secretary of State the assurances of his most distinguished consideration.

SCHLÖZER.

Mr. Fish to Mr. Schlözer.

DEPARTMENT OF STATE,
Washington, September 12, 1873.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Schlozer, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of Germany, requesting that the consul-general of the United States at Alexandria, in Egypt, may be instructed to surrender certain packages supposed to contain valuables, which packages are said to be in the possession of one Twiney, an attorney of Leopold Ungar, the reputed owner of the valuables. With a view to show the reasonableness of this request, Mr. Schlözer sets forth certain antecedents of the said Ungar, and calls upon this Government to decide accordingly that he is not a citizen of the United States.

In reply the undersigned has the honor to state that the Mr. Twiney referred to is quite unknown to this Department, though a person of that name has been mentioned in communications from the consul-general of the United States at Alexandria, as an Englishman and the attorney of Ungar there. Even, however, if he were a citizen of the United States, there is no authority here to compel him to surrender property in his possession as requested by Mr. Schlözer. If German subjects claim such property, such claim must be asserted before the customary authority at Alexandria, which, it is presumed, will decide the case pursuant to law.

It is supposed that the national character of Leopold Ungar has nothing to do with the question involved. Even, however, if it were otherwise, this is more properly a judicial question, which it is believed it is not competent for executive authority definitively to decide.

Accept a renewed assurance of my very high consideration.

HAMILTON FISH.

Mr. Schlözer to Mr. Fish.

GERMAN LEGATION,
Washington, September 15, 1873. (Received Sept. 17.)

SIR: I have the honor to acknowledge the receipt of your kind note of the 12th instant, in reply to my own of the 8th, concerning the matter of Leopold Ungar.

If I take the liberty to return once more to the same subject I do so for the following reasons:

By your note it would seem that I requested "that the consul-general of the United States at Alexandria may be instructed to surrender certain packages which are said to be in the possession of one Twiney."

Your note, moreover, points out that "there is no authority here to compel him (Twiney) to surrender property in his possession, as requested by Mr. Schlozer."

I here must allow myself to state that I have received no instructions whatever from my government to make either of the above requests, and on a reperusal of my note I cannot find there anything in allusion to such prayers.

The object of my note was the following:

Ungar has left in Alexandria certain packages in the possession of Twiney. These packages are demanded by the tribunal at Cologne. Twiney refuses to surrender the packages, because he pretends that Ungar is an American citizen.

The German government holds that in consequence of the treaty of 1868, Ungar is a Prussian citizen.

This opinion is not adopted by Twiney nor by the United States consul-general at Alexandria. Hence, the German government wishes to have the decision by the United States government about this question of nationality, and I did allow myself to beg you for such a decision, believing that the United States Department of State, which has made the treaty, would be the competent authority to give the decision.

In case your opinion should coincide with that of my government, I requested, moreover, that you would kindly communicate the fact (*i. e.* your opinion on Ungar's Prussian nationality) to the United States consul-general at Alexandria.

Your note, however, states in conclusion, that the Executive authority is not competent to decide this matter of nationality, but that it more properly is a judicial question.

Under these circumstances, I beg your permission to request that you would have the kindness to point out to me the way in which to meet the demand of my government, or to kindly procure for me—if it should be possible—the opinion of the United States Attorney-General upon the subject in question.

Accept, sir, the renewed assurances of my highest consideration.

SCHLÖZER.

Mr. Davis to Mr. Schlözer.

DEPARTMENT OF STATE,
Washington, September 18, 1873.

SIR: Your note of the 15th instant, relative to the case of Leopold Ungar, has been received. It seemed so obvious that the main purpose of your previous note, of the 8th instant, was to obtain possession of the valuables in the possession of one Twiney, the English lawyer, that the Department deemed itself justified in assuming that you wished the consul-general of the United States at Alexandria to be instructed to cause the valuables to be surrendered, especially as Twiney was said to hold them subject to his order. It seems, however, that your principal object was to induce this Department to decide that Ungar is not

a citizen of the United States. In reply, I again have to express my regret that it is not deemed either expedient or competent to make any such decision in such case. This, however, does not arise from any disposition to deprive German subjects of their rights to the valuables adverted to. The consul-general of the United States at Alexandria will consequently be directed not to allow any control which he may have over those articles as the property of a countryman to interfere with the just claims of others thereto.

Accept, sir, a renewed assurance of my very high consideration.

J. C. B. DAVIS.

Mr. Davis to Mr. Hoar.

DEPARTMENT OF STATE,
Washington, May 11, 1869.

SIR: I am instructed by the Secretary of State to ask your opinion in the following case:

Applications are made in behalf of five persons in the island of Curaçoa for passports. They were all born in that island except one, who was born in Saint Thomas. All are over twenty-one except one, who is a youth of fifteen. Four of them are children of a native citizen of the United States of America, domiciled at Curaçoa, who would appear not to have resided in this country since 1841. The other is the son of a native citizen whose residence is not stated. It does not appear affirmatively that any of the applicants have resided or intend to reside in the United States, or that more than one of them has ever been in this country.

The act of 1855 (10 U. S. Statutes, p. 604) provides that "persons heretofore born or hereafter to be born out of the limits and jurisdiction of the United States, whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers never were citizens of the United States."

It is provided by chapter 127 of the laws of 1856, (11 U. S. Statutes, p. 60,) that passports shall not be "granted or issued to or verified for any other persons than citizens of the United States."

This Department desires to know whether these applicants are citizens of the United States, and, as such, whether they are entitled to passports.

I have the honor to be, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

Hon. E. ROCKWOOD HOAR,
Attorney-General.

Mr. Hoar to Mr. Fish.

ATTORNEY-GENERAL'S OFFICE,
June 12, 1869.

SIR: I have the honor to acknowledge the receipt of your letter of May 11, 1869, in which you ask my opinion whether five persons residing

in the island of Curaçoa, for whom application is made for passports, are citizens of the United States, and entitled, as such, to have passports issued to them. You state that four of them are over twenty-one years of age, and that one is a youth of fifteen; that four of them were born in that island and one was born in Saint Thomas; that four of them are children of native citizens of the United States domiciled at Curaçoa, who would appear not to have resided in this country since 1841, and the other the son of a native citizen whose residence is not stated; and that it does not appear affirmatively that any of the applicants have resided or intended to reside in the United States, or that more than one of them has ever been in this country.

I do not think that either of these facts is material to the question of their citizenship, except the fact that their fathers were, at the time of their birth, citizens of the United States. That fact being established, the children, under and by virtue of the act of Congress of February 10, 1855, chap. 71, (10 Stat., 604,) are deemed and considered and are thereby declared to be citizens of the United States, "*Provided, however*, That the rights of citizenship shall not descend to persons whose fathers never resided in the United States." If, therefore, the fathers of the applicants, at the time of their birth, were citizens of the United States, and had at some time resided within the United States, it is my opinion that the applicants are citizens of the United States under the provisions of the statute, and entitled to all the privileges of citizenship which it is in the power of the United States Government to confer. Within the sovereignty and jurisdiction of this nation they are undoubtedly entitled to all the privileges of citizens.

In regard to the other branch of your inquiry, whether they are entitled, as such, to passports, my answer must be more qualified. I understand a passport to be a certificate of citizenship, and that a person receiving it is certified to be entitled to such protection as the Government can give to its citizens in foreign countries. But while the United States may, by law, fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of American citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it is clear that the United States cannot, by undertaking to confer the rights of citizenship upon the subjects of a foreign nation who have not come within our territory, interfere with the just rights of such nation to the government and control of its own subjects. If, therefore, by the laws of the country of their birth, children of American citizens, born in that country, are subjects of its government, I do not think that it is competent to the United States, by any legislation, to interfere with that relation, or by undertaking to extend to them the rights of citizens of this country, to interfere with the allegiance which they may owe to the country of their birth, while they continue within its territory, or to change the relation to other foreign nations which, by reason of their place of birth, may at any time exist. The rule of the common law I understand to be that a person "born in a strange country under the obedience of a strange prince or country is an alien," (Co. Litt., 128 *b*,) and that every person owes allegiance to the country of his birth. I have no means of ascertaining what the law of Curaçoa may be in this respect. But if the applicants can receive any passport from your Department, it would seem that it must be a qualified one, which should state that although they were citizens of the United States, they were only so in the qualified sense which I have indi-

cated, reserving such rights, obligations, and duties as might attach to them under the laws of the country in which they live and in which they were born, over which the United States could have no control while their domicile continued, nor until they should come within our territorial jurisdiction.

I do not understand that the granting of passports from your Department is obligatory in any case, but is only permitted where it is not prohibited by law. Whether according to the practice of your Department, passports are ever issued with any exceptions or limitations attached to them, I do not know; but in the strict and general sense of the language of your question, I am of opinion that the applicants are not entitled to passports.

I have the honor to be, &c.,

E. R. HOAR.

Mr. Hall to Mr. Davis.

No. 107.] UNITED STATES CONSULATE,
Matanzas, February 22, 1870. Received March 3.

SIR: I have the honor to submit to the Department a copy of a letter just received from Mr. Felix Govin y Pinto, resident in New York, inclosing a document drawn up and signed by him before Mr. Thomas Ritter, a notary public of said city, by which the said Govin manumits five negresses, and which he desires me to present to a notary public of this place to be recorded.

I have returned to Mr. Govin the inclosure referred to, in a letter under date of yesterday, a copy of which I also accompany herewith.

My reasons for declining to act in the premises are the following: That by a decree of the captain-general of the island, which was published in the *Aurora del Zumuri*, a newspaper of this city, on the 3d instant, the property of said gentleman was laid under embargo.

The document alluded to bears date the 7th instant, at which time Mr. Govin had lost the power of alienating his property, either by sale or emancipation. Mr. Govin justifies his application to this consulate on the ground of his being an American citizen. There is no evidence here of his being such citizen, and even if he be one, his residence in the United States and the peculiar and international character of the case would seem to require his communicating first with the Department rather than with one of its foreign agencies.

Another and strong reason why I have declined to take any action whatever is that I suspect the whole matter was intended to create complications between the government of Spain and that of the United States, and I am unwilling to allow this consulate to be made use of for sinister purposes.

I trust that my course will be approved.

I have, &c.,

W. O. PARKINSON,
Vice-Consul.

HAVANA, *February* 22, 1870.

SIR: Mr. Felix Govin y Pinto, up to within a few months, has been a practicing lawyer at Matamoras, of which place he is a native, and where he has his permanent residence. When and how he became a citizen of the United States is not known to me or to the authorities of the island.

The course pursued by the vice-consul at Matamoras is by my direction. If not approved, the Department will please return the inclosed letter, addressed to Mr. Govin, with such instructions as it may deem proper.

HENRY C. HALL,
Consul.

[Translation.]

NEW YORK, *February* 10, 1870.

DEAR SIR: Although I have not the honor of your personal acquaintance, I am aware of your characteristic courtesy, and therefore trust that you will be pleased to deliver the inclosed document to a notary public, in order that it may be duly recorded (*pioto colizado.*) For expenses incurred, be pleased to draw at sight upon me at No. 109 Water street.

I pray that you will pardon the trouble which, in virtue of his being an American citizen, is caused by your obedient humble servant,

FELIX GOVIN Y PINTO.

The UNITED STATES VICE-CONSUL, *Matamoras.*

Reply.

UNITED STATES CONSULATE,
Matamoras, February 21, 1870.

DEAR SIR: I beg to own receipt of your communication of 10th instant, inclosing to me a document, whereby freedom is granted to five of your negresses, which document you desire me to present to one of the notaries public of this city to be recorded.

In reply I would state that, in view of the embargo lately laid upon your property by the superior government of the island, this consulate can take no action in ths premises without specific instructions from the Department of State. Should the document be transmitted through the medium of the Department, this consulate will act according to directions which may be given.

I therefore return the inclosure, regretting that I cannot assist you in accomplishing your philanthropic intention.

Your obedient servant,

W. O. PARKINSON,
Vice-Consul.

Mr. FELIX GOVIN Y PINTO,
No. 109 *Water Street, New York.*

Mr. Davis to Mr. Fox.

No. 49.] DEPARTMENT OF STATE,
Washington, May 12, 1869.

SIR: Your dispatch No. 5, inclosing copies of a correspondence between yourself and the governor of Trinidad de Cuba, relative to the arrest and detention of four certain persons, all of Spanish origin, who (you claimed) were entitled to your official intervention, has been received.

It appears that in April last José M. Valdespino, Rafael Vingut, Gabriel Suarez del Villar, and Francisco de Graragorri were arrested

by order of the authorities at Trinidad de Cuba; that you interfered in their behalf, asking for the motives of "their arrest," claiming, as vice-consul of the United States, that they were American citizens; that correspondence in regard to this claim ensued, in the course of which you forwarded to the governor copies of the naturalization papers of each of these gentlemen; that the governor replied to this that he had examined the papers forwarded by you, and it appeared that only Mr. Saurez del Villar was a naturalized citizen of the United States, and that each of the other gentlemen had only declared his intention to become such citizen; that the governor thereupon conceded that Mr. Suarez del Villar was entitled to the prerogatives of United States citizenship, unless he had broken the laws of Cuba, or had renounced his adopted citizenship; and that as to the three other persons, the governor demanded to know whether you still claimed for them the rights of citizens of the United States; that you replied, re-asserting the right of these gentlemen to your official intervention and protection, (referring to the case of Martin Koszta,) and further saying that the case was submitted to your Government, and you must abide by its decision; and that the governor replied, re-asserting his position, and denying the applicability of the Koszta precedent.

In reply, now, to your dispatch, I have to say that your action touching Mr. Suarez del Villar is approved, and that your action in regard to the other gentlemen named in the correspondence is not approved.

The late distinguished Secretary of State, Mr. Marcy, was very careful in his elaborate letter concerning the case of Martin Koszta not to commit this Government to the obligation or to the propriety of using the force of the nation for the protection of foreign-born persons who, after declaring their intention to become at some future time citizens of the United States, leave its shores to return to their native country. He showed clearly that Koszta had been expatriated by Austria, and required to reside outside her jurisdiction; that at the time of his seizure he was not on Austrian soil, or where Austria could claim him by treaty stipulations; that the seizure was an act of lawless violence, which every law-abiding man was entitled to resist; and he took especial care to insist that the case was to be judged, not by the municipal laws of the United States, not by the local laws of Turkey, not by the conventions between Turkey and Austria, but by the great principles of international law. It is true that in the concluding part of that masterly dispatch he did say that a nation might at its pleasure clothe with the rights of its nationality persons not citizens, who were permanently domiciled in its borders. But it will be observed by the careful reader of that letter that this position is supplemental merely to the main line of the great argument, and that the Secretary rests the right of the Government to clothe the individual with the attributes of nationality, not upon the declaration of intention to become a citizen, but upon the permanent domicile of the foreigner within the country.

To extend this principle beyond the careful limitation put upon it by Secretary Marcy would be dangerous to the peace of the country. It has been repeatedly decided by this Department that the declaration of intention to become a citizen does not, in the abscence of treaty stipulations, so clothe the individual with the nationality of this country as to enable him to return to his native land without being necessarily subject to all the laws thereof.

In the present unhappy state of things in Cuba the Secretary of State can see no reason for departing from so well established and so wise a rule. He sees with horror the barbarous proclamations of the Spanish

authorities, and hears with regret of the great destruction of property caused by the civil war. He earnestly exhorts you, and all other consuls of the United States, to spare no efforts to protect the lives, the property and the rights of American citizens in this emergency, and he will see with satisfaction any unofficial efforts you may make to shield the persons of those who have declared their intentions to become citizens from the barbarities of the Spanish volunteers, but he desires me to direct you hereafter in your official action to observe the rule laid down for your guidance in this instruction.

I am, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

HORATIO FOX, Esq.,
U. S. Consul, Trinidad de Cuba.

Mr. Fish to Mr. Boker.

No. 15.] DEPARTMENT OF STATE,
Washington, April 19, 1872.

SIR: The dispatch without number addressed to this Department by Mr. Brown, chargé d'affaires at Constantinople, under date of 29th of February, has been received.

It acknowledges the receipt of the Circular Instruction No. 16, on the subject of passports and citizenship.

Mr. Brown reports the case of Mr. Joseph Paul Hamson, who is said to be in possession of a passport, issued by the legation at London, in 1858, which is not accepted by the legation at Constantinople, because Mr. Hamson has not papers of naturalization. It is desirable that a more exact report should be made to this Department of the facts in this case.

Mr. Brown next mentions the case of Mr. Gunster, who, he states, is not a native of the United States, nor of American parentage, and has never been in the United States. Under circumstances thus described, Mr. Gunster, of course, cannot be recognized as a citizen of the United States. It is understood from your dispatch No. 3, under date of 12th March, that he has absconded.

Mr. Brown next mentions the case of Mr. Aristahis Azarian. Record has been found in this Department of the passport, No. 6696, issued to him under date of 6th January, 1855. If, however, Mr. Azarian is an Ottoman subject by birth, and has made his domicile of late years in Constantinople, his case would appear to come within the rules of the circular from the Department of October 14, 1869.

Mr. Brown next mentions the case of Mr. James Azarian. Record of the passport, said to have been issued to him by this Department, has not been found, but as the date and number are not mentioned in Mr. Brown's dispatch, it is quite possible that such a passport may have been issued at some time. The case appears to be governed by the rule just now mentioned for the case of Mr. Aristahis Azarian.

In withdrawing from these persons, or either of them, recognition of their American citizenship, you will be careful to give them due notice, so that they need suffer no unnecessary inconvenience.

I am, &c.,

HAMILTON FISH.

Mr. Boker to Mr. Fish.

No. 18.] LEGATION OF THE UNITED STATES,
Constantinople, May 12, 1872. (Received June 3.)

I have the honor to acknowledge the receipt from the Department of State of dispatches numbers 15, 16, and 17. I shall carefully follow the instructions as to the course to be pursued toward certain pretended citizens of the United States residing in Constantinople, indicated in dispatch No. 15.

From all the testimony which I can gather, Mr. Joseph Paul Hamson, although in possession of a passport issued at London in 1855, has not really the slightest claim, beyond that established by the passport, of being considered an American citizen.

Mr. Brown's report as to Mr. J. F. Gunster is correct. Mr. Gunster is an Austrian Jew by birth, and he has never set his foot upon the territory of the United States. As you suppose, he is the absconding jailer mentioned in my dispatch No. 3. We shall probably never again hear of him.

Shortly after my arrival here Mr. Aristahis Azarian presented himself to me, exhibited his old passport from the Department of State, and requested me to issue a new passport to him. Knowing that there had been a question as to his right of citizenship in the United States, which my predecessor, Mr. Morris, had refused to acknowledge, I questioned Mr. Azarian closely, and he professed to be able to obtain copies of his naturalization papers from the United States, and pledged his word to produce them within a reasonable time. Pending that production, to the time allowed for which I have placed a limit, I instructed the consul-general to protect Mr. Azarian as fully as though his claim were established. I hope that Mr. Azarian may prove his right to citizenship of the United States, for he is a very useful man to this legation, sitting, as he always willingly does, as judge in the tidjaret or mixed court, in American cases, and therein displaying marked ability. We could more readily dispense with many a man of undoubted citizenship, in the American colony, than with the valuable services of Mr. Aristahis Azarian. In addition to the claim advanced by the two Azarians, Aristahis and James, a third brother, Mr. Joseph Azarian, is undoubtedly a citizen of the United States. He resides in the city of Boston almost altogether, where he and his two brothers have, in conjunction, an important commercial house. On the whole, this Azarian affair is pretty well mixed up, after the usual Levantine fashion, and whether Aristahis and James can emerge from it as American citizens remains to be seen. I understand that there was no suspicion of the claim of the brothers Azarian to American citizenship until, at the death of their father, a few years ago, when they got into a triangular fight over the property of the deceased, and one brother denounced the others to the minister, the consul, and to everybody who would listen to him, *more Turcico*. Now that peace has been made among them, the protesting brother would fain return his family to our fold, *more Turcico* once more.

The passport of James Azarian I shall endeavor to find. It is said to be among the papers of the late Mr. Brown.

I have, &c.,

GEO. H. BOKER.

Mr. Smithers to Mr. Hunter.

No. 160.] UNITED STATES CONSULATE,
Smyrna, October 19, 1872. (Received November 12.)

SIR: I have the honor to acknowledge the receipt of dispatch No. 69 of the Department, dated September 14, in reply to mine of August 17, 1872, relative to the case of Hubert P. M. Reggio.

My refusal to register Mr. Reggio as a citizen of the United States, upon the presentation of a citizen's passport, was based upon the knowledge that for six or seven years past he had been domiciled at Smyrna, carrying on the business of a merchant. It was also known to me that before leaving for the United States, in May last, Mr. Reggio produced at this consulate an Italian passport, for the purpose of having it viséd, and was informed by the clerk that this formality was unnecessary unless he specially desired it.

It seemed to me, therefore, that the naturalization certificate of Mr. Reggio must have been improperly obtained, and that it was my duty to refer the case to the Department for its investigation and instruction.

Upon receipt of the Hon. C. Hale's dispatch, above referred to, informing me that the passport of Mr. Reggio was believed to have been duly issued upon proof of his naturalization, June 14, 1872, in the circuit court of the United States at Boston, I immediately addressed a letter to Mr. Reggio, copy of which, marked No. 1, is herewith inclosed, inviting him to appear before me and make answer to the interrogatories therein contained. I herewith inclose copy of his written reply, marked No. 2.

This evidence confirms the verbal statement previously made to me by Mr. Reggio, namely, that at the time of his first arrival in the United States he was a minor; that his declaration of intention was made during his minority; that he left the United States before he reached his majority, to return to Smyrna, with the evident intention of permanently locating there, and that he resided here till May last, when he went to the United States, and obtained his naturalization and the passport above referred to.

In view of the requirements of the acts of Congress regarding the naturalization of aliens, as well as the instructions contained in paragraphs 110 and 111 of the Consular Regulations, I respectfully submit to the Department whether Hubert P. M. Reggio is entitled to registration by me as a naturalized citizen of the United States.

I have, &c.,

E. J. SMITHERS,
United States Consul.

[Inclosure.]

Mr. Smithers to Mr. Reggio.

UNITED STATES CONSULATE,
Smyrna, October 15, 1872.

SIR: With a view of ascertaining whether or not you are entitled to protection of this consulate, as a naturalized citizen of the United States, I have to ask that you will appear at this consulate on or before Thursday next to reply to the following interrogatories, viz:

1. What is your age?
2. Where were you born, and what was the nationality of your parents?
3. Where did you reside before going to the United States?
4. When did you first arrive in the United States?

5. When did you leave the United States for the first time and return to Smyrna?
6. How long have you been residing at Smyrna since your return, and under what protection have you been?
7. When did you establish your firm of Reggio & Belhomme?
8. When did you go to the United States and obtain your naturalization?

I am, &c.,

E. J. SMITHERS,
United States Consul.

[Inclosure.]

Mr. Reggio to Mr. Smithers.

SIR: I have duly received your honored note of the 15th instant, and beg to say, in reply, that some family interests calling me away from town, I am unable to appear at the consulate on Thursday next.

I will endeavor to answer the several questions you wish me to to the best of my recollection.

I am twenty-seven years old.

I was born in Smyrna, and my parents, who were likewise born in the same city, were under the Sardinian protection.

Before going to the United States I resided in Smyrna.

I first arrived in the United States in the year 1862, (or 1863,) and took my first naturalization papers.

I first left the United States for Smyrna at the end of 1866.

I have been residing in Smyrna ever since.

I carry on business under the French protection, my partner being a Frenchman, and all my interests have been protected up to this day by the French consulate. When I last left Smyrna for the United States I was compelled to take an Italian passport.

The firm of Reggio and Belhomme was established on the 1st day of December, 1866.

I went to the United States and obtained my first papers of naturalization in May or June last.

I remain, &c.,

HUBERT P. M. REGGIO.

REPORT OF THE EXAMINER OF CLAIMS IN THE CASE OF KINDINICO.

BUREAU OF CLAIMS, *May* 13, 1873.

Subject: The brothers Kindinico in Egypt, judgment of Visetti against them. Mr. Beardsley's No. 78, asking instructions on the subject.

For the purposes of the question now involved it is not deemed necessary to examine the official correspondence between the Department and the consul-general at Alexandria further back than Mr. Hale's No. 133, of October 22, 1868. In that dispatch Mr. Hale informs the Department:

I. That one Trubro (an Ottoman subject) called at the consulate as the attorney of the Kindinicos with the information that George N. Kindinico had, on the 3d of July, 1868, received his final naturalization papers in the supreme court of the city of New York, and had, on the 29th of the same month, obtained from this Department a passport, No. 38,456. He desired the consul to transmit to the local authorities a claim of Geo. Kindinico against a native subject. Mr. Hale declined to do so, advised the Department of his action, and also states that the claim now presented is one of a large number of similar claims awaiting recognition by the American consulate.

II. In its No. 65, of the 29th December, 1868, the Department, in answer to the above dispatch, speaking of the particular claim, says: "Upon the face of the papers these would appear to be merely private claims, not involving any controversy with the government of Egypt. If this

be so, the circumstance of the Kindinicos not being personally present in Egypt is no reason for withholding the assistance," and instructs him to ascertain whether the claims are merely private or partake of a political character, and to report for further instruction, and also advises the consul that Thos. Kindinico was furnished with a new passport on the 20th of August, 1868.

III. On the 29th of January, 1869, Mr. Hale, in his No. 143, informs the Department that the claims are of a private character, enters into a detailed history of the Kindinico matters, referring especially to a previous instruction of the Department in 1864, wherein it denounced the claims of the Kindinicos to American citizenship as groundless and fraudulent. In this dispatch the consul furnishes an index to all the official correspondence on the subject between the Department and the consulate.

IV. The Department on the 1st of April, 1869, in instruction 67, replying to the above dispatch, says: "The Messrs. Kindinico have been naturalized as citizens of the United States, and will receive the ordinary recognition due to that character;" adding, "This recognition and protection, however, are not to relate back to proceedings antecedent to the naturalization of those persons respectively, nor to any controversies in which they have been or may be involved with the Government, in respect to which the instructions heretofore given you are confirmed." It further instructs the consul to exact from the Kindinicos in all transactions with the local government on their behalf such security for costs as will indemnify the consulate against loss or liability.

The above instruction seems to indicate very clearly the views of the Department as to the non-retroactive character of the act of naturalization.

V. On the 12th of March, 1870, Mr. Hale, in his No. 198, informs the Department that he has received a paper from the consulate-general of Italy, stating that G. B. Visetti, an Italian subject, had, in 1859, recovered, in the court of the consul-general of Austria, (of which country the Kindinicos were then subjects,) a judgment against the brothers Kindinco for $8,000; that certain real estate in Alexandria, owned by the Kindinicos, had been set apart by the court for its payment, but the judgments had never been carried into effect; that neither the Austrian nor American consulate recognized the Kindinicos as citizens of their respective countries; that the Egyptian government had announced by circular that the Kindinicos would not be recognized as other than Ottoman subjects, no matter what their naturalization.

The Italian consul sends a copy to Austrian and American consulates, and also to local government. Mr. Hale files it and reports to Department.

VI. This dispatch is acknowledged on the 18th of April, 1870, instruction No. 87, and the hope expressed that the adoption of the new system of judicial reforms in Egypt will relieve the consulate from further annoyance in relation to the affairs of the Kindinicos.

VII. In the dispatch now before me, (78, from Mr. Beardsly,) he says Mr. Butler interfered in behalf of the Kindinicos; no mention of it in Mr. Butler's dispatches. Mr. Beardsly now wishes instruction as to his duty in the premises, and asks, in case the question of the execution of the judgment, either by the Austrian consul or the local authorities, seeking to execute, he should interfere to prevent its execution on the ground that the Kindinicos are now citizens of the United States, or whether, on the other hand, if appealed to by the Austrian or Italian consul, he should aid in the enforcement of the judgment.

CONCLUSION.

It is, in my opinion, no part of the duty of the United States consul to interfere either to prevent the execution of the judgment or to aid in its enforcement. As to the United States and their courts, it stands in the relation of a foreign judgment, obtained in the courts of a friendly power, the court having jurisdiction of the person and the subject-matter. As such the judgment is entitled to the highest respect. It was long a question of debate in England whether foreign judgments should be held conclusive, or whether their merits might not be inquired into when they were sued on in English courts. In a case cited in Story's Conflict of Laws (§ 604) Lord Nottingham is reported in these words:

> We know not the laws of Savoy; so, if we did, we have no power to judge them, and therefore it is against the law of nations not to give credit to the sentences of foreign countries till they are reversed by the law and according to the form of those countries where they were given. For what right hath our kingdom to reverse the judgment of another, and how can we refuse to let a sentence take place until it be reversed? And what confusion would follow in Christendom if they should serve us so abroad and give no credit to our sentences?

And Lord Hardwicke, quoted in the same connection, says:

> Where any court, foreign or domestic, that has the proper jurisdiction of the case makes the determination, it is conclusive to all other courts. *(Ibid.)*

Visetti might take a transcript of that judgment and sue the Kindinicos in the United States consulate, and there get another judgment, which he could then ask our consul to enforce; so, if he wished to collect it in New York, or elsewhere in the United States, he would have to sue on the judgment and obtain a judgment in our courts, but as to its execution by the subjection of the property upon which it was made a lien at the time of its rendition, it stands to the United States consulate in Egypt and to the United States precisely as if it were being enforced in Austria or any other foreign country; and the same rule holds as, I think, if the Austrian consulate or the local authorities seek to enforce the judgment in any other way, within the limitations of civilized usage and the law of nations. On the principles above stated the United States consul cannot be called upon to give any aid to the plaintiff, to the Italian consul, the Austrian consul, or anybody else, in enforcing it. It is not a judgment of his court, nor of the courts of his nation. Mr. Kindinico cannot claim to be in any better position than if he had left Austria, came to the United States, took up his residence here, and become naturalized, leaving a judgment behind in Austria against him which was being enforced against his property in Austria. This is just his relation to the American consulate-general in Egypt.

Respectfully submitted.

HENRY O'CONNOR.

PART VI.—CORRESPONDENCE BETWEEN GREAT BRITAIN AND OTHER COUNTRIES.

It would be manifestly impossible to give an abstract in this memorandum of all the correspondence which has taken place between Great Britain and other countries, as as the preliminary search through the official registers and manuscript volumes, even if the inquiry were restricted to the last thirty years, would probably occupy several weeks, if not months.

There are, however, certain standard cases which are frequently referred to as precedents, and which are consequently more readily accessible.

An effort will be made to give a *résumé* of these, as well as to examine cursorily the correspondence of the last few years.

The principal subject of correspondence has been the claim to British protection of the sons and grandsons of British subjects born in foreign countries.

By the act 4 Geo. II, cap. 21, (explaining 7 Anne, cap. 5,) all children of natural-born British subjects, born out of the ligeance of the Crown of England, are "adjudged and taken to be, and all such children are hereby declared to be, natural-born subjects of the Crown of Great Britain, to all intents, constructions, and purposes whatsoever." (Statutes at Large, vol. v, p. 113.)

The act 13 George III, cap. 21, extended the provisions of this statute to the grandchildren of native British subjects. (*Vide ante*, "Laws of Great Britain.")

On the other hand, as previously explained, the common law of England considers all persons born within British territory to be British subjects, without regard to their parentage.

A conflict, hence, arises between the principle of the British doctrine of native allegiance and the statutory enactments extending that allegiance to the sons and grandsons of British subjects born within the ligeance of other countries.

Such persons, finding that they are declared by statute to be subjects of the British sovereign, naturally look to that sovereign for protection in return.

The manner in which this claim is practically dealt with is shown by the following instructions to Consul Dale, of the 20th December, 1842, based upon an opinion delivered by Her Majesty's advocate-general, and which forms the model on which all subsequent instructions to Her Majesty's representatives or consuls abroad, upon this subject have been framed:

By the statute law of this country, all children born out of the allegiance of the King, whose fathers, or grandfathers by the father's side, were natural-born subjects, are themselves deemed to be natural-born subjects, and are, therefore, entitled to enjoy British rights and privileges while they are within British territory; but the effect of British statute law cannot extend so far as to take away from the government of the country in which those persons may have been born the right to claim them as natural-born subjects, at least so long as they remain in that country.

By the common law of England, all persons born within the King's allegiance, whether the children of British subjects or of foreigners, are deemed to be natural-born subjects of the Crown of England, and if the law of any foreign state be the same, by equally admitting to its rights as subjects persons born within its own territory, that country has the right to exact the service of a subject from such person, even if he be the child of a foreigner, at least while such child remains in the country of his birth.

Therefore the children or grandchildren, by the father's side, of natural-born British subjects born in any other country than Montevideo are entitled to be protected in that country as natural-born subjects of the Crown of Great Britain. But as regards the children of British fathers born in Montevideo, such children cannot be protected against the operations of the laws affecting the subjects of that country, unless the laws of that country do not admit the child of a foreigner to the rights of a subject.

ARGENTINE REPUBLIC—BUENOS AYRES.

The struggle between Montevideo (Argentine Republic) and Buenos Ayres led to a variety of questions respecting the position of British subjects in the countries bordering on the River Plate.[1]

In reply to an inquiry from Mr. Ewart in the House of Commons on the 4th of April, 1845, Sir Robert Peel stated: "It appeared that the general law was this: That the son or grandson of a British subject born abroad was also a British subject. But he could not deny that children born in a foreign state were not also subjects of that state. Such was the law in this country; for the children of foreigners born in Her Majesty's dominions were British subjects. If the children of British residents at Buenos Ayres were born out of that state, the authorities there had no right to make them Buenos Ayrean subjects. If, however, the children of British subjects were born at Buenos Ayres and continued to reside there, they obtained the rights of citizenship in that place; but with those rights they also had imposed upon them the burdens and duties of citizens, and were liable to the law of Buenos Ayres."

In December, 1850, Mr. Hood, Her Majesty's consul at Buenos Ayres, requested instructions respecting the renewal of certificates of British nationality to natives of Hanover, and to British subjects who, from their occupation or business, were compelled by the local enactments to wear the red waistcoat, hat-band, and ribbon, distinctive of Buenos Ayrean nationality.[2]

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[1] Hansard, vol. lxxix, p. 177. [2] MS. volume Nationality Cases. Mr. Hood, No. 48; December 16, 1850. To Mr. Hood, No. 7; March 24, 1851.

Lord Palmerston replied, "that if there is a Hanoverian minister or consul at Buenos Ayres he should, of course, take charge of Hanoverian subjects; but if there is no such officer, then Hanoverian subjects may still continue to remain under British protection, but it does not appear to me to be necessary that fresh certificates of British nationality should be granted to such Hanoverians.

"I have further to state to you that a subject of Her Majesty cannot divest himself of his allegiance by submitting to any local enactment compelling him to wear any particular uniform or badge in a foreign country in which he may think proper to reside, and that he does not thereby forfeit his right to be protected by his own government."

In October, 1857, Mr. Christie reported that the Argentine national Congress had passed a law enabling the sons of aliens born within Argentine territory to choose between Argentine citizenship and that of their fathers.[1]

Mr. Christie added that he had advised the Buenos Ayrean government, who were forcing the sons of aliens into service, to make a similar law.

At the close of 1857 a large number of British residents at Buenos Ayres having addressed a memorial to the British government complaining of the forced enlistment of the sons of foreigners in the local militia, Lord Palmerston wrote a dispatch to Mr. Christie acknowledging that Her Majesty's government could not claim such persons as British subjects; but, pointing out the various reasons which could be urged, both on grounds of policy and comity, against such a rigid exercise of military law.[2]

This dispatch is too long for insertion here, but it well deserves attention in case of an occasion arising in which similar arguments might be called for.

The result of this representation was that the government of Buenos Ayres issued a decree on the 12th of April, 1858.[3] "The government has resolved to admit substitutes for all the acts of the service of the national guard on the part of the sons of foreigners born in the country, (and who, by our laws, are citizens of it,) who may wish to have them, subject to the regulations which may be necessary and conducive to the good service of the same, it being understood that the substitutes must be foreigners and that their principals will remain subject to all responsibility consequent on all culpable default in the service."

Some communications took place from 1854 to 1857 between the English and French governments as to the rights of the sons of aliens born in Buenos Ayres to the protection of the country of their fathers' birth.

In November, 1857, Count Walewski informed Lord Cowley that the French consuls had been instructed to contend that the sons of Frenchmen so situated were entitled to French protection, but that he had carefully considered the whole subject, and "that he must confess he considered the claim untenable.[4] The claim had been originally put forward under the tenth article of the first book of the Code Napoléon, which declares 'que tout enfant né d'un Français en pays étranger est Français,' and had always been insisted on until now. On the other hand, his excellency found that by the seventeenth article of the same book and code it is declared, 'que la qualité de Français se perdra par tout établissement fait en pays étranger sans esprit de retour.' There was therefore an apparent contradiction in the code itself, to remedy which the interference of the legislature would probably be required."

At a subsequent interview Lord Cowley urged Count Walewski to send to the French consuls the same instructions as had been sent to Mr. Christie.[5] The count replied, "that at this moment he was not in a position to send any instructions whatever upon the subject, for that he was still under the pressure of the interpretation put by former governments on the law of France. In stating to me, as he had done some time back, that he considered the position until now taken by France on this question to be untenable, he had only given his own private opinion—an opinion, indeed, which he had expressed officially in council; and he had asked me for the English practice in cases of this nature with the intention of employing it as a further argument with the minister of justice for the necessity of changing the terms of the French law. Until this, however, should be accomplished, he had no choice but to insist, as had his predecessors, that all children born of French subjects abroad are, to all intents and purposes, French subjects also.

"Count Walewski, however, said that as the law would without doubt be altered, he had recommended the Buenos Ayres government to let the matter rest for the present."

The French law never has been altered.

On the 3d of March, 1860, Mr. Thornton forwarded a copy of a treaty concluded between Spain and the Argentine Confederation, containing among other provisions an article stipulating that the sons of Argentines and Spaniards, born in those respective countries, should be allowed to choose the nationality they may prefer, and suggested that England might claim for the sons of her subjects any exemption from military duty which this treaty might confer on the sons of Spaniards.[6]

[1] Mr. Christie, No. 125; October 28, 1857. [2] To Mr. Christie, No. 1; January 4, 1858. [3] Mr. Christie, No. 13; April 15, 1858. [4] Lord Cowley, No. 625; November 28, 1857. [5] Lord Cowley, No. 1, 745; December 29, 1857. [6] Mr. Thornton, No. 25; March, 1860.

Lord John Russell replied that it did not appear that any special privilege was secured to Spain by this treaty, which merely adopted, as between the contracting parties, the existing law of each country as to nationality; and that even if any privileges had been given by this treaty to Spaniards, there was no more most-favored-nation clause on this particular point in the British treaty of 1825, which entitled British subjects to claim the benefit of them.[1]

On the 27th of November, 1861, Lord Russell instructed Mr. Thornton that, if the sons of British subjects wished exemption from military service, they should exercise the option given to them by Argentine law, between Argentine and British nationality.[2]

In 1862 Mr. Thornton raised the question whether, as the Argentine Provinces and the state of Buenos Ayres were recognized as separate belligerents, the sons of British subjects born within the provinces might not claim exemption from service in Buenos Ayres, and *vice versa*.

Mr. Thornton was informed that, in the absence of any treaty stipulation, even aliens may under certain circumstances be rendered liable to military service in the country of their domicile, without any violation of international law, and that it must be remembered that the persons in question were not aliens in the Argentine Confederation.[3]

Moreover, the law of September 29, 1857, seemed to extend to the sons of aliens, wheresoever born, and the provinces might therefore contend that those who had omitted to take advantage of its provisions had thereby constituted themselves Argentines by default.

In August, 1863, Mr. Doria reported that it was proposed to pass a new law by which all persons born within the Argentine Confederation should be declared to be Argentine citizens irrespective of the nationality of their parents.[4]

Mr. Doria was approved for having protested against a retrospective application being given to this law, in regard to the children of British parents; as, although it appeared that there were no adult persons of this class who had availed themselves of the option given by the law of 1857, to elect to be deemed British subjects, yet there might be others still in their minority whose time for making their election had not yet arrived.

At the same time such a law would not be *ultra vires* of the Argentine Confederation. It was quite competent to the Confederation to pass such a new law, though, as an act of comity, it would be preferable to retain the previous one.

AUSTRIA.

During the Venetian insurrection in 1848 the provisional government claimed a right to exact payment to a forced loan from certain British and Ionian subjects, on the ground that, by an Austrian decree of the 15th of May, 1833, they had acquired Austrian (and therefore Venetian) citizenship.[5] (See Laws of Austria, and addenda H.)

This decree provided that all foreigners who, at the date of its publication in those provinces, should have completed an uninterrupted residence of ten years were allowed to free themselves from the Austrian citizenship acquired by such residence, on giving proof that they never had an intention of becoming Austrian citizens. Such proof was to be given within six months from the date of the decree, in default of which it would no longer be admitted.

The Venetians maintained that under this law British subjects who had resided uninterruptedly for ten years in Venice became Venetian citizens, unless they expressly renounced that citizenship.

Mr. Consul-General Dawkins remonstrated against the interpretation put upon this law, and his having done so was approved by Her Majesty's government.

It appeared, however, that some of the persons thus pleading their quality of British subjects as exempting them from the forced loan had taken office under the Venetian government.

Lord Palmerston instructed Mr. Dawkins that such persons were, by the twenty-ninth article of the Austrian civil code, liable to be considered as subjects of the Venetian government, and consequently not entitled to exemption. Lord Palmerston did not, however, disapprove of Mr. Dawkins having endeavored to preserve them from the severe effect of the forced contribution imposed by the provisional government.

BELGIUM.

In December, 1860, a case occurred at Brussels, (that of M. Ignatius Téleki,) in which various questions were put to Her Majesty's government by Lord Howard de Walden, as to the status of naturalized British subjects.[6]

[1] To Mr. Thornton, No. 42; July 7, 1860. [2] To Mr. Thornton, No. 54; November 27, 1861. [3] To Mr. Thornton, No. 22; May 28, 1862. [4] Mr. Doria, No. 84; August 28, 1863. To Mr. Doria, No. 38; November 4, 1863. [5] Consul-General Dawkins, No. 117; August 26, 1848. To Consul-General Dawkins, No. 36; November 28, 1848. [6] Lord Howard de Walden, No. 151; December 3, 1860. Lord Howard de Walden, No. 152; December 3, 1860. To Lord Howard de Walden, January, 1861.

Under the advice of the law-officers the following instructions were furnished for his guidance:

"The first question is, whether a person who was naturalized as a British subject previously to the 24th of August, 1850, is entitled to a permanent passport; and the answer to it is, that as the rule in regard to the limitation of time in passports granted to naturalized British subjects applies only to those naturalized subsequently to the above-mentioned date, there can be no question as to the right of a person naturalized previously to that date to receive, like any natural-born British subject, a passport not limited in regard to time.

"The second question is, whether a woman, either by birth a British subject, or a naturalized British subject, or an alien, is entitled, on being married abroad to a naturalized subject, to receive a passport in her new character of a married woman. The answer is, that if the woman is a natural-born British subject, she does not lose that character by marrying a naturalized British subject, and that consequently she is entitled to a fresh passport as a British subject in her married name; but if the woman is a naturalized British subject, or an alien, then, as the woman cannot, in her married state travel under her maiden name, and as whatever may have been her nationality before marriage, she acquires upon marriage the nationality of her husband, she is entitled to be placed in regard to a passport on the same footing as her husband; and, consequently, in such a case, Her Majesty's ministers or consuls would be authorized to act exceptionally, and to grant to the woman an original passport, subject to the same conditions as the passport held by her husband, that is to say, to a passport not limited in point of time, if her husband's passport is not limited, or limited so as to correspond with the limit of time at which her husband's passport will expire, if her husband's passport is limited. But in no case must the wife's name be inserted in the passport held by the husband previously to the marriage; for no minister or consul is authorized under any circumstances to insert an additional name in a passport, whatever number of names such passport, when originally granted, was stated to include."

Your lordship asks three further questions:

"1st. As regards the character of the children of a British naturalized subject born abroad, the answer is, that such children share the character of their father, and are to be considered as naturalized British subjects, so long at least as they are under age and living with their father.

"But this is, of course, subject to the local law which may rightly deal with children born in the country, whatever may be the circumstances of their father, as natural-born subjects of the country in which they were born.

"2d. Whether naturalized subjects are entitled to be married at Her Majesty's legations or consulates. The answer is that they are so entitled.

"3d. Whether naturalized subjects are to be presented at court by Her Majesty's diplomatic servants; and to this I reply that I see no ground on which a general rule excluding them from such presentations should be laid down; and I consider that Her Majesty's representative may properly use in regard to the presentation of naturalized British subjects the same discretion as they are in the habit of using in regard to natural-born."

BRAZIL.

In March, 1845, Mr. Hesketh, Her Majesty's consul at Rio de Janeiro, forwarded to Lord Aberdeen a copy of a representation which he, in conjunction with the French and other consuls, had addressed to the Brazilian government, remonstrating against the interpretation given to the sixth article of the constitution of Brazil, namely: that excepting those foreigners who may be in Brazil in the service of their own states, the offspring of all other foreigners born in Brazil must necessarily be Brazilians.[1]

Lord Aberdeen replied that "inasmuch as by the law of the United Kingdom all persons born within the allegiance of the British Crown are deemed to be British subjects, you would have acted more prudently if you had refrained from signing the representation made to the Brazilian government respecting the nationality of the children of foreigners born in Brazil."[2]

In 1849 Her Majesty's consul at Peru asked whether the children of British subjects born in Portugal were to be considered as British subjects in Brazil, and was informed that children of British subjects born elsewhere than in Brazil, and whether in a British territory or in a foreign country, are to be regarded in the light of British subjects, and to be entitled to protection as such.[3]

On the 2d of April, 1853, Mr. Jerningham reported that he had been in communication with the Brazilian government respecting the forced conscription of the sons of

[1] Consul Hesketh, No. 16; March 27, 1845. [2] To Consul Hesketh, No. ; August 30, 1845. [3] Consul Ryan; January 17, 1849.

British subjects born in Brazil, and that the Brazilian minister had stated to him that it was proposed to bring forward a law in the Brazilian chambers providing that up to the age of 21 years, sons born in Brazil of British residents should remain under the control of their parents, and that on attaining their majority they should be allowed to choose between British and Brazilian nationality.[1]

Mr. Jerningham remarks in this dispatch that the French claimed complete exemption for the sons of French subjects thus situated, and that though the Brazilian government did not acknowledge the claim, they did not attempt to force such Frenchmen into their army.

Lord Clarendon instructed Mr. Jerningham to say that Her Majesty's government agreed to the proposed clause, but that they hoped that "either by legislative enactments, or by the course hitherto adopted by the Brazilian government, no British subject will be called upon to perform military service."[2]

It appeared subsequently that there had been some misunderstanding between Mr. Jerningham and the Brazilian minister, and that the proposed clause was intended to apply reciprocally to the subjects of those States, the laws of which acknowledged the children of Brazilians born within their territories to be Brazilians, and would not, therefore, affect British subjects.[3]

Lord Clarendon then directed Her Majesty's minister to inquire whether the Brazilian government really intended to carry out the principle of reciprocity, and to place children born of British subjects in Brazil on exactly the same footing with regard to military service as that in which the children of Brazilian subjects were placed in England; as the imposition on them of forced military service would be plainly inconsistent with such a principle, "for, although a power does exist in this country in certain contingencies, very unlikely to occur, of resorting to the ballot for raising militia, (in which case, however, substitutes would be allowed,) yet, in point of fact, both the regular army and the militia are recruited entirely by volunteers, and there is therefore, practically, no forced military service in England."[4]

At the close of 1853, there was a change of ministry in Brazil, and in April, 1854, Mr. Howard (who had succeeded Mr. Jerningham) called the attention of the new government to this subject, but without receiving any reply.[5]

He again pressed it on their attention in August, when the foreign secretary, Senhor Limpo de Abreo, promised to look into the matter, but "gave no hope of an alteration in the laws of nationality, saying that he thought they could not constitutionally be interpreted in the manner in which the late minister for foreign affairs, Senhor Paulino, had in view; that such an alteration would meet with considerable opposition in the chambers, and that he himself doubted its expediency."[6]

Being urged to take some steps to bring the question to a conclusion in October, 1854, Senhor de Abreo repeated that it presented great constitutional difficulties, and could not be solved without the concurrence of the legislature.[7]

This closed the correspondence.

It is to be observed that neither in 1852 nor 1854 do there appear to have been any particular cases reported in which the sons of British subjects were forced into the Brazilian service, and it may, therefore, be presumed that the Brazilian authorities continued to act upon an unofficial arrangement come to with Mr. Jerningham in 1853, by which such persons were practically exempted from the conscription.[8]

In December, 1865, Mr. Spence, a member of the English bar, who had been born in Brazil, applied for the appointment of law adviser and translator to Her Majesty's mission at Rio de Janeiro.

Mr. Spence (in reply to an observation respecting the inconvenience which might be occasioned by a person whom the Brazilian government could claim as their subject being employed in such a capacity,) stated "that although there can be no question, according to article 6 of the Brazilian constitution, that from having been born in Brazil, though of British parents, I became a Brazilian subject, I respectfully submit that from having (when called to the bar in 1858) sworn allegiance to Her Majesty, I lost my Brazilian nationality, according to article 7 of the same constitution. It is true that the words of article 7 are 'naturalization,' but the taking of the oath of allegiance would, no doubt, be held equivalent to naturalization. But even if that were not so, the acceptance by a Brazilian subject (without the license of the Emperor) of any office from a foreign government would cause the loss of Brazilian nationality, as may be seen on reference to clause 2 of article 7 of the same constitution."[9]

Mr. Spence forwarded translations of the articles of the constitution referred to:

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[1] Mr. Jerningham, No. 20; April 2, 1853. [2] To Mr. Jerningham, No. 22; July 8, 1853. [3] To Mr. Jerningham, No. 30; August 8, 1853. Mr. Jerningham, No. 85; September 13, 1853. To Mr. Howard, No. 14; October 31, 1853. [4] To Mr. Howard, No. 14; October 31, 1853. [5] Mr. Howard, No. 82; April 25, 1854. [6] Mr. Howard, No. 162; August 11, 1854. [7] Mr. Howard, No. 199; October 13, 1854. [8] Mr. Jerningham, No. 20; April 2, 1853. [9] To Mr. Spence; December 20, 1865. Mr. Spence; December 26, 1865.

WHO ARE BRAZILIAN CITIZENS?

"ARTICLE 6.—1. Those born in Brazil, either free or freedmen, although the father be a foreigner, if not resident in the service of his nation.

"2. Children of a Brazilian father, and the natural children of a Brazilian mother, born in a foreign country, who may come to have a domicile in this country.

"3. The children of a Brazilian father who may be in a foreign country in the service of the Emperor, although they do not require a domicile in Brazil.

" 4. All those who, born in Portugal and her possessions, were resident in Brazil at the time when the independence was proclaimed in the provinces where they lived, and shall have expressly adhered to the said independence, or impliedly by continuing their residence in Brazil.

" 5. Foreigners naturalized, whatever may be their religion.

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THOSE WHO ARE DEPRIVED OF SUCH RIGHTS.

"ARTICLE 7—1. Those who have become naturalized in a foreign country.

" 2. Those who, without the Emperor's license, accept any employment, pension, or decoration, from any foreign government.

" 3. Those sentenced to banishment."

CHINA.

Difficulties having arisen with regard to the claims to British protection to British-born subjects of Chinese origin within the Chinese Empire, it has been arranged that they should wear a distinctive dress, and a government notification to that effect has accordingly been published at Hong-Kong.

"The following circular from his excellency Sir Rutherford Alcock, K. C. B., with its inclosure, relative to British subjects of Chinese descent residing or being in Chinese territory, is published for general information.

" J. GARDINER AUSTIN,
" *Colonial Secretary Administering the Government.*

"GOVERNMENT OFFICES,
" *Hong-Kong, November* 2, 1868."

"*Circular No.* 10.

"PEKIN, *October* 7, 1868.

"SIR: Pursuant to instructions from Her Majesty's secretary of state for foreign affairs, I have issued the inclosed notification regulating the conditions under which persons of Chinese descent, who are British subjects, may reside or travel in China under British protection.

"You will observe that it is left entirely optional to such persons to claim the status of British subjects within the Chinese territories or not, as they may see fit. But in the event of their electing to sink their British nationality, and reside or travel as Chinese among Chinese, they cannot claim any exemption from the jurisdiction and laws of the country they adopt of their own free will, and after due notice of the consequences.

"You will give all due publicity and effect within your jurisdiction to the inclosed, in conformity with the provisions of the Queen's order in council of 1865.

"Your obedient servant,

"RUTHERFORD ALCOCK.

"To Her Majesty's CONSUL, &c., &c., &c., *Shanghai.*"

" *Notification.*

"Whereas many persons of Chinese descent, who are or claim to be British subjects, go to reside or travel in the dominions of the Emperor of China, and whereas serious difficulty exists in distinguishing such British subjects from natives amenable to Chi-

nese laws only, and accordingly great practical inconvenience frequently results to the parties themselves, and to the authorities of both countries; and whereas it is desirable, with a view to the maintenance of order and good government of British subjects of Chinese descent resorting to China, and for the maintenance of friendly relations between British subjects and Chinese subjects and authorities, that a remedy should be provided for such inconvenience: Therefore, by the authority and power vested in me by the eighty-fifth section of the China and Japan order in council, 1865, I do declare and order that all British subjects of Chinese descent shall, while residing or being in Chinese territory, discard the Chinese costume and adopt some other dress or costume whereby they may readily be distinguished from the native population. And I do further warn all British subjects of Chinese descent so residing or being in the Chinese dominions as aforesaid, that in the event of their infringing or not observing this order and regulation, they shall not be entitled to claim British protection or interference on their behalf in any court of justice or elsewhere in the Chinese dominions.

"And I do further order that every British subject of Chinese descent who shall sue in any Chinese court of justice, or appear in public before the authorities of the empire, shall be and is hereby required to pay all due respect to the Chinese authorities according to the custom and usage of the country, save and except that such British subject shall not be bound or required to observe any custom or ceremony whereby he would admit that he is a subject of His Imperial Majesty.

"Given under my hand at Pekin this sixth day of October, one thousand eight hundred and sixty-eight.

"RUTHERFORD ALCOCK,
"*Her Britannic Majesty's Envoy Extraordinary, Minister Plenipotentiary, and Chief Superintendent of Trade.*"

COLOMBIA—NEW GRANADA.

A correspondence took place in 1847–'48–'49 respecting the lawsaffecting aliens in New Granada.[1]

This was renewed in 1855.

The principal subjects treated of were the law as to intestate estates and a decree which had been issued respecting claims for losses suffered during the civil war.

In 1861 Mr. Griffith requested to be informed whether Mr. Bransby, a British subject, residing in New Granada, and who had accepted an appointment as interpreter in the New Granadian civil service, was to be considered a British subject.

Mr. Griffith was instructed that Mr. Bransby had not, by accepting such employment, forfeited his allegiance, or ceased to be a British subject; and it was not suggested that he had formally renounced his British allegiance, or taken any oath of allegiance to the republic of New Granada.[2]

His rights, therefore, to protection as a British subject, in all matters not immediately connected with his employment as interpreter, were unimpaired, and, excepting as to such matters, he was as much entitled to British protection as he was before he accepted that employment.

In May, 1862, Mr. Griffith reported that the United States minister had communicated to him confidentially the instructions which he had received from Mr. Seward respecting the protection to be afforded to United States citizens domiciled in New Granada.[3]

These instructions were to the following effect:

Citizens temporarily visiting New Granada, but retaining their domicile in the United States, were to be afforded protection against any impositions of the government there for its support and maintenance.

Citizens of the United States, no matter how they acquired that title, who have gone to New Granada, become domiciliated there, and are pursuing business, or otherwise living there, without definite and manifest intentions of returning to the United States, are subject to all the laws of New Granada affecting property or material rights, exactly the same as citizens of New Granada.

Mr. Griffith adds that he has been informed that the New York commission for the liquidation of United States claims arising out of the collision at Panama in 1856, acting upon those principles, had ignored all the claims brought forward by United States citizens who were domiciled on the Isthmus at the time of the collision.

In June, 1862, Mr. Griffith forwarded a copy of an official decree declaring that for-

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[1] Mr. O'Leary, No. 11; March 31, 1847. To. Mr. O'Leary, No. 17; July 16, 1847. *Mr. O'Leary, No. 25; 1848. To Mr. O'Leary, No. 13; 1848. *Mr. O'Leary, No. 49; 1848. To Mr. O'Leary, No. 3; 1849. *Mr. O'Leary, No. 26; 1855. *Mr. O'Leary, No. 36; 1855. *To Mr. O'Leary, No. 15; 1855. [*These papers are missing from the volumes.] Mr. Griffith, No. 80; September 2, 1861. [2] To Mr. Griffith, No. 68; November 16, 1861. [3] Mr. Griffith, No. 38; May 15, 1862.

eigners domiciled "in the republic are to be allowed to acquire real property in the same manner as natives."[1]

This decree further provided that foreigners or "immigrants" should be naturalized from the moment they enter the republic, and were to be entitled to all the rights and be subjected to all the obligations of native citizens. For the space of 20 years, however, they were to be exempted from military service, except in the case of foreign war, from all direct or extraordinary contributions, and from all public employment, save that which might be imposed on them in the municipal district where they happened to reside.

Mr. Griffith was instructed that "although such a law was unusual, it was competent for a country to make and enforce it, without furnishing any ground of complaint to foreign states. The distinction drawn by it between commorant and resident foreigners seemed, on the whole, reasonable and just. The foreigner who, by the relations of property, marriage, profession, or business, and length of residence, had incorporated himself into a state, certainly owed a qualified allegiance to it, and it would be entitled to extend its protection to him with reference to all other states but that of his origin or birth. Such foreigners are truly and practically citizens of the state which they have adopted, and cannot complain that they are liable to the obligations of native citizens, with whom they are placed on an equality in every other respect."[2]

On the 19th of April, 1865, a law was passed defining the condition of foreigners in the United States of Colombia.[3]

Article 2 classifies foreigners into domiciled and transient residents.

3. Domiciled foreigners are those who establish themselves permanently, or publicly declare their intention of so establishing themselves, or have resided two years.

Temporary residents are exempted from military service or office.

Domiciled aliens are exempted from military service, forced loans, and all personal employment or office of a permanent character.

5. Repudiates any responsibility for damages suffered by aliens in time of war, they in such cases being placed on the same footing as natives.

6. Aliens interfering in civil or international contests to become subject to all the penalties and duties of Colombians.

7. This law not to interfere with treaty stipulations.

Mr. O'Leary, on this law being communicated to him, immediately remonstrated against article 5, the practical inutility of which had indeed been remarked on by the Colombian President, who had opposed its being passed.

Mr. O'Leary's remonstrance was framed on the instructions forwarded to Her Majesty's chargé d'affaires when a similar law was enacted in 1847, and was approved by Her Majesty's government.[4]

In October, 1865, Mr. O'Leary[5] requested to be informed whether the children, born in England, of Mr. Montoya, a native Colombian naturalized in England, were entitled to exemption from the Colombian military service as British subjects.

Mr. O'Leary[6] added that, by the Colombian constitution, the offspring of Colombian parents born abroad were to be considered as citizens "when domiciled in Colombia."

Mr. O'Leary[7] was instructed that "This is a question of Colombian municipal law; but upon the statement contained in your dispatch, it appears that the children of Señor Montoya, who is a native Colombian, are domiciled in Colombia, and that they are subject to the obligations of Colombian citizenship. The fact that Señor Montoya is a naturalized British subject does not exempt him from the operation of the law of the State of his birth and natural allegiance while he resides in that State."

DENMARK.

The case of Mr. Rainals, British vice-consul at Copenhagen, which led to a long correspondence in 1863, illustrates the operation of the Danish laws with regard to the claim of the Danish Crown to the allegiance of aliens domiciled in Denmark.

[8]The correspondence commenced with a demand made upon Mr. Rainals for the payment of a dog-tax in 1860. Mr. Rainals pleaded exemption as an alien. The Danish government declared that he was a Danish subject, but offered to remit the tax as an act of comity; but Mr. Rainals refused such a compromise, and insisted upon being acknowledged to be a British subject.

Upon this the Danish government declared that their view of his nationality was borne out—

1. By the fact of his having sworn allegiance to the King of Denmark on obtaining a "borgerbrev" in 1848.

[1] Mr. Griffith, No. 46; June 20, 1862. [2] To Mr. Griffith, No. 29; September 30, 1862. [3] Mr. O'Leary, No. 27; May 10, 1865. [4] To Mr. O'Leary, No. 11; March 21, 1847. [5] To Mr. O'Leary, No. 28; July 28, 1865. [6] Mr. O'Leary, No. 65; October 20, 1865. [7] To Mr. O'Leary, No. 6; December 21, 1865. [8] Sir A. Paget, No. 132; June 2, 1863.

2. By his having been born in Denmark.

With regard to the "borgerbrev," it appeared that in 1848 Mr. Rainals had settled as a broker at Elsinore, and in order to obtain permission to carry on his profession had applied to the mayor of that town for a "borgerbrev" or freedom of the city.

When this was issued to him, the Elsinore authorities alleged that he had signed the following paper:

"In the year 1848, on the 11th of May, appeared before the magistracy Harry Thomas Alfred Rainals, born at Copenhagen, aged thirty-one years, and demanded to obtain borgherskab (rights of a burgher) as clearer and agent for payment of sound dues.

"As he has satisfactorily proved his earlier respectability, and, in accordance with evidence produced, has been appointed consular agent for the United States of North America, whereby he is free from serving in the militia, nothing could be said against the said demand, and the said H. T. Rainals was, after having taken the usual burgher oath,[1] (thus worded, 'I promise and swear to be true and faithful to His Majesty our Most Gracious Hereditary Lord and King Frederick VII, to defend with my utmost power and ability his realm and land from harm, as well as to be dutiful and obedient to the burgermaster and council which are now in power and to those who come after them; and finally to act toward my fellow-citizens as it becomes and befits an honest man to do. So help me God and His Holy Word,') furnished with the rights of a burgher (borgherskab) as clearer and agent for payment of sound dues to Elsinore.

"H. T. A. RAINALS.
"ROGERT."

Mr. Rainals asserted that he had never taken any oath such as is here inserted; that the copy of the entry given to him did not include the part between brackets; and that in order to take an oath he must have held up three fingers, which he distinctly recollected he had not done. He further showed that he had resigned his "borgerbrev" in 1859.

Sir A. Paget then requested the Danish government to explain whether they considered the mere fact of obtaining a "borgerbrev" constituted a person a Danish subject.

The foreign secretary replied (May 28, 1863): "Quant à la question positive à savoir si un sujet Britannique en prêtant le serment de bourgeois devient sujet Danois, il est de fait qu'en prêtant le serment il se fixe dans ce pays, et en se fixant et en prenant domicile en Danemark il devient sujet Danois et entre dans tous les droits et tous les devoirs civils et sociaux d'un sujet Danois. Pour ce qui regarde les droits et les devoirs politiques, ceux-ci n' appartiennent qua'à ceux qui sont en possession de l'indigénat qui, s'il n'est pas acquis par le fait même de la naissance dans ce pay, ne peut être obtenu qu'en vertu d'une loi. Quant au côté négatif, à savoir, si un sujet Britannique en acquérant les droits et en se soumettant aux devoirs d'un sujet Danois perd sa qualité de sujet Britannique, c'est là une question dont la solution paraît dépendre le plus spécialment de la législation Britannique. Pour ce qui est de notre législation relativement à ce point, celle-ci ne s'oppose pas à ce que la coexistance de deux nationalités puisse être admise dans la personne du même individu; seulement, dans le principe, sa qualité de sujet étranger ne doit porter aucune atteinte à l'accomplissement des devoirs qui lui incombent comme sujet Danois."

With regard to his having been born in Denmark, Mr. Rainals cited an opinion given by the attorney-general of Denmark on a recent occasion when a bill respecting the naturalization of certain foreigners had been discussed in the chambers.

A decree of January 15, 1776, provided that children of foreigners, born in Denmark, can claim the rights of Danish citizenship after a permanent residence in that country up to their eighteenth year.

The attorney-general gave it as his opinion, though other lawyers differed on the subject, that by the terms of this decree the children of aliens born in Denmark were capable of being admitted to the rights of natural-born Danish subjects; and Mr. Rainals accordingly argued that this was conclusive proof that they were not considered to be natural-born subjects. Moreover, one of the persons for whose naturalization the act under discussion made provision was stated to have been born in Denmark.

Sir Augustus Paget[2] now referred the question for the consideration of Lord Russell; and, after further information on the points of law raised in it had been procured from Copenhagen, Lord Russell, under the advice of the Queen's advocate, instructed him that "it is not denied that Mr. Rainals was born in Denmark, and the opinion of the Danish lawyers so far coincides with that expressed by M. Hall that the renunciation by Mr. Rainals of his rights as a citizen of Elsinore does not relieve him from the obligations of allegiance to the Crown of Denmark.

"It is admitted that he obtained the 'borgerbrev,' and he must, under these circumstances, be deemed to have taken the usual preliminary oath.

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[1] This oath has been since modified. (*See* Sir A. Paget's Despatch, p. 1–16.) [2] To Sir A. Paget, No. 141; August 26, 1863.

"I infer also that he obtained this 'borgerbrev' on the footing of a Danish subject, and without the delay of five years, which would have been necessary for a foreigner. It appears that, though by returning the 'borgerbrev,' he is replaced in his former position, he nevertheless remains subject to whatever obligations attach to a person born in Denmark and subsequently resident there."

[1] In 1864 a case occurred at Saint Croix in which the Danish authorities claimed to administer to the estate of a deceased British subject who had taken out a "borgerbrev" in that island.

As the person in question had been domiciled at Saint Croix at the time of his death, Her Majesty's consul was not instructed to contest the interpretations put by the authorities on the effect of taking out such a burgher license; but it was considered that some arrangement should be made with them whereby the absent heirs and next of kin of a British subject so situated should be apprised, by notice in the London Gazette, of the intended distribution of such property by Danish tribunals.

FRANCE.

The registers of the correspondence between England and France for the last five-and-twenty years have been searched; but they do not present many cases of interest.

[2] Lord Cowley forwarded, in 1855, a report by M. Treitt on a question between the French and British governments respecting the administration to the intestate estate of a naturalized Brazilian subject, named Braga.

Señor Braga died at Paris, leaving a son born in Brazil, of a Brazilian mother, and a second wife, a Frenchwoman, with two sons born in France.

The Brazilian consul first proceeded to administer to the estate on behalf of the eldest son, who was absent in Brazil, and then on behalf of the two younger sons, "enfants mineurs nés en France, mais sujets Brésiliens aux termes de la loi Française."

The widow opposed the consul's interference in regard to the younger sons, and appealed to the "Tribunal Civil de Première Instance," which, by two summary judgments, confirmed the consul's powers. The matter was then referred to the Brazilian government, who instructed the consul to abstain from taking any further proceedings on behalf of the minor children, as by a recent Brazilian decree, the administration to the intestate property of aliens was vested in the local authorities, and not in the consul of the alien's country, when the widow was a Brazilian and the children born in Brazil.

This case rather concerns Brazilian than French law; but it is worthy of remark, as illustrative of the French doctrine, as to the nationality of the minor children of aliens born in France.

[3] In August, 1856, the French chargé d'affaires in London recommended to the favorable consideration of Her Majesty's government a petition from the French residents in British Guiana, praying for exemption from the local militia.

[4] The French embassy was informed (October 10, 1856) that "to hold out to the French residents in British Guiana, in general terms, that they are specially favored, would, in the opinion of Her Majesty's government, place them in a false position, and would raise expectations that could not be fulfilled, inasmuch as they cannot be exempted from militia service, which is the particular favor that they solicit.

"As the French settlers appear to make this application from the fact that the Portuguese are exempted from militia service, I have the honor to acquaint your excellency that this exemption is owing to certain provisions of a treaty,[5] which appear to Her Majesty's government to be so manifestly inexpedient and objectionable in principle, that they have now under consideration the propriety of opening negotiations for an alteration of that treaty in this respect."

[6] In December, 1857, the colonial office forwarded copies of a correspondence with the governor and lieutenant-governor of British Guiana on this subject, and asked whether any communication should be addressed to the French government, or whether the claim of the French residents to exemption should be directly negatived.

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[1] Consul Rainals; June 9, 1864. [2] Lord Cowley, No. 1,188; September 7, 1855. [3] Baron de Malaret; August 21, 1856. [4] To Count de Persigny; October 10, 1856. [5] The treaty referred to is the Treaty of Commerce and Navigation of July 3, 1842. "Article I. "They shall be exempt from forced loans or any other extraordinary contributions not general or not by law established, and from all military service by sea or by land." Similar provisions are inserted in most treaties of this description, and are of essential service to protect British subjects from conscription. *See* treaties with Russia, Italy, &c., and the recent treaty with Colombia, February 16, 1866. Article XVI. "The subjects and citizens of each of the contracting parties in the dominions and possessions of the other shall be exempted from all compulsory military service whatever, whether in the army, navy, or national guard or militia." There is no such general treaty with France. [6] Colonial office; December 23, 1857.

[1] Lord Clarendon, in reply, stated that he considered that the note to the French embassador of the 10th of October, 1857, was "a sufficient announcement of the intentions of Her Majesty's government with regard to this question."

[2] In December, 1857, Lord Cowley requested to be informed whether a gentleman named Julien Colonna Walewski, born in London, of Polish parents, was to be considered[3] and protected as a British subject in France.

[4] Under the advice of the law officers, Lord Cowley was instructed that, under the circumstances stated, M. Walewski was entitled to be so considered.

The correspondence previously referred to ("Argentine Republic—Buenos Ayres,") arose about this time respecting the protection to be afforded to the children born of British and French parents in Buenos Ayres, in the course of which the French government requested to be informed of the state of the British law with regard to the children of aliens born within British territory.

[5] In reply to the inquiries thus made by the French government, Lord Clarendon directed Lord Cowley to state to them, "With reference to the questions put to you by Count Walewski, as reported in your dispatch No. 1625, I am not aware of any treaty between this country and a foreign state which would give to children born of British parents in those states the rights of British subjects; and in reply to his excellency's inquiry as to what is the law of England in such matters, I have to observe that the general law of England in the matter is that all children, of whatsoever parentage, born in the Queen's dominions, are British subjects by birth, and are in England entitled to the privileges and liable to the obligations of that status.

"The children of British subjects, although born abroad, if their fathers or their grandfathers by the father's side were natural-born subjects, are by certain British statutes to be deemed natural-born subjects themselves to all intents and purposes in England; but neither these statutes nor the general principles of English or international law, or of reciprocity or comity so far as great Britain is concerned, would justify her in maintaining that such persons are 'British subjects' within the true intent and meaning of a treaty with a foreign nation in which their case is not specially provided for, or in contending that they are, while residing in such foreign country, exempt from the obligations incident to their status as natural-born subjects or citizens of such foreign country, of their actual birth and residence. Great Britain may confer upon them any privileges as far as her own territories are concerned, but no such privileges can avail as against or in derogation of their antecedent natural and legal obligations to the country of their birth."

Earl of Malmesbury to the Earl of Cowley.

FOREIGN OFFICE, *March* 13, 1858.

[6] MY LORD: Your excellency recently requested to be informed how the decisions could be reconciled which had been come to Her Majesty's government upon two cases of nationality which had been under their consideration.

"The first of the two cases was that of a gentleman named Julien Colonna Walewski, who had claimed from your excellency to be considered a British subject on the ground that his father (a Polish emigrant) had gone to England in 1824, where he had married an English lady, and had resided in England up to the time of his death in 1854, during which period Mr. J. C. Walewski had been born in London. In this case it was the opinion of Her Majesty's government that M. Walewski, having been born in London, was, under the circumstances, entitled to be considered a British subject in France.

"The second case had been raised with regard to the law of this country on the question of the nationality of children of British subjects born in foreign countries, as bearing upon the general question at issue with regard to compulsory enlistment by the government of Buenos Ayres. The opinion given by Her Majesty's government upon this case was that all children, of whatever parentage, born in the Queen's dominions, are British subjects by birth, and are in England entitled to the privileges and liable to the obligations of that status.

"Your excellency pointed out with reference to these two decisions, that it appeared to you that according to the latter it is only in England that foreigners born in England enjoy the rights of British subjects; whereas, according to the former, M. Walewski was to be treated as a British subject in France.

"I have now to inform your excellency that Her Majesty's government, having carefully considered the difficulty suggested by you, do not see that there exists any contradiction between the two decisions.

"If M. Julien Colonna Walewski had been born in France, (although of British parents,) and had voluntarily returned to France, he would have been a British subject

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[1] To colonial office; January 11, 1858. [2] Lord Cowley, No. 1691; December 19, 1857. [3] To Lord Cowley, No. 1813; December 31, 1857. [4] Law officers; December 26, 1857. [5] To Lord Cowley, No. 1780; December 24, 1857. [6] To Lord Cowley, No. 78; March 13, 1858.

in England, but he would not have been entitled to British privileges or protection in France as against the country of his actual birth and domicile.

"And this, as it appears to Her Majesty's government, is precisely the case of the children of British subjects who are born and resident in Buenos Ayres. They are British subjects in England, but this cannot prevent their being considered and treated as Buenos Ayreans in Buenos Ayres; but M. Waleski was born in England, and, as such, is a natural-born subject of Her Majesty, and the circumstance that his father was a Pole cannot disentitle him to British privileges in France.

"It is competent to any country to confer, by general or special legislation, the privileges of nationality upon those who are born out of its own territory, but it cannot confer such privileges upon such persons as against the country of their birth, when they voluntarily return to and reside therein. Those born in the territory of a nation are (as a general principle) liable, when actually therein, to the obligations incident to their status by birth. Great Britain considers and treats such persons as natural-born subjects, and cannot therefore deny the right of other nations (as Buenos Ayres) to do the same.

"But Great Britain cannot permit the nationality of the children of foreign parents born within her territory to be questioned. The expression, 'in England,' found by your excellency in the decision given by Her Majesty's government in the Buenos Ayres case, referred to the inquiry of Count Walewski, as reported by you, 'What is the law of England in such matters?'

"I am, &c.,

"MALMESBURY."

[1] In reply to an inquiry addressed to the foreign office in July, 1859, Lord John Russell stated to M. Julien that, "independently of any disabling clause which they may contain, British letters of naturalization do not give the holders of them any right to British protection in the country of their birth."

A case occurred in 1861 in which a M. Casanbon claimed protection from the British embassy at Paris to procure his exemption from the conscription on the ground that he was born in the Mauritius.

[2] It appeared that his father was a Frenchman, and the French government accordingly claimed him as a French subject.[3]

[4] Lord Cowley was instructed to request the French government to state the reasons upon which "M. Casanbon had been subjected to the conscription, notwithstanding his certificate of British nationality, and the fact of his having been born in the Queen's dominions, and having resided there until he was of age."

The result of Lord Cowley's application to the French government was not reported.

[5] A question arose in February, 1861, as to the right of a naturalized British subject, Mr. Zwinger, a Swiss by birth, to be married at the British embassy.

[6] Lord Cowley was instructed to allow the marriage in question to be solemnized at the British embassy, taking care that the bride was previously informed that Mr. Zwinger may be considered legally as a Swiss citizen, as well as a naturalized British subject; and that the validity of the marriage might be open to doubt in Switzerland, France, and elsewhere out of England, and recommending her to be previously married in the French civil form.[7]

GERMANY.—FRANKFORT.

[8] Sir Alexander Malet having requested to be informed, in June, 1863, whether a naturalized British subject is entitled to claim, in the land of his birth, British protection against any penalties which he may have incurred by the act of withdrawing himself from his native land, Lord Russell[9] replied, "That a foreigner who has become a naturalized British subject cannot claim British protection against the operation of the law of his native country, so as to exempt himself from any penalties which the law of his native country may inflict upon him when he returns to it."

[10] In April, 1864, a Mr. Grimm applied to Sir A. Malet for protection as a British subject on the ground that he had received a "denization"[11] act issued by a judge of the supreme court of New South Wales in 1856, though he had been domiciled in Germany since 1859.[12]

[13] Mr. Grimm had been convicted of an assault on a railway guard in the grand duchy

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[1] To M. Julien, July 11, 1859. [2] Lord Cowley, No. 426. [3] Lord Cowley, No. 364; March 20, 1861. [4] To Lord Cowley, No. 347; March 20, 1861. [5] Lord Cowley, No. 194; February 4, 1861. [6] Queen's Advocate; February 27, 1861. [7] To Lord Cowley, February 24, 1861. [8] Sir A. Malet, No. 81; June 2, 1863. [9] To Mr. Corbett, No. 2; June 19, 1863. [10] Sir A. Malet, No. 129; April 30, 1864. [11] Sir A. Malet, No. 36; May 13, 1864. [12] Sir A. Malet, No. 139; May 24, 1864. [13] Sir A. Malet, No. 140; May 28, 1864.

of Hesse, and he requested Sir A. Malet to get the sentence of imprisonment passed on him reversed.

[1] Sir A. Malet was instructed that if the country of Mr. Grimm's birth was the same as the one whose court had tried and condemned him, Her Majesty's minister ought not to interfere on his behalf, on the ground of the alleged act of denization; but if Mr. Grimm had been tried in the court of a third country, *i. e.*, not the country of his original allegiance, then Sir A. Malet should use his good offices in whatever manner might be expedient and discreet.

It turned out that Mr. Grimm was a Prussian by birth, and Sir A. Malet accordingly entered into an official communication with the authorities, and Mr. Grimm's sentence appears to have been eventually commuted for a fine on his petitioning the Grand Duke.

HANSE TOWNS.

James Terry having applied to Colonel Hodges for exemption from service in the civil guard, in 1851, Lord Palmerston furnished Colonel Hodges with the following instructions:

[2] "It appears that James Terry, the person whose case you quote, was born in Hamburg, and must therefore be considered, while within the State of Hamburg, as a Hamburg subject: and it appears, moreover, that his father was admitted a citizen before the son attained his twelfth year, and that by the law of Hamburg the son would, on that account, also be deemed a Hamburg subject. Under those circumstances there can be no reason to question the liability of James Terry to serve in the civic guard, or in the federal contingent, precisely the same as any other native of Hamburg.

"With respect to the general liability of British subjects resident in Hamburg to perform either or both of these kinds of service, I have to authorize you to give way to the liability of British subjects to serve in the civic guard for the protection of the city in which they reside, if you should find it necessary to do so; but you should strenuously resist any pretension to require British-*born* subjects, whether admitted or not to the rights of citizenship, to serve in the Hamburg contingent, because that contingent is not a force raised and embodied for the maintenance of order within the city and state of Hamburg, nor even solely for the defense of the Hamburg state, but is a portion of the army of Germany, and is organized for the purposes of foreign war, beyond and out of the Hamburg territory, to be waged not merely for the Hamburg interests, but possibly for the interests of any one of the other states of Germany; and the making of such a war would not depend upon the will and decision of the government of Hamburg, but upon the will and decision of the central diet.

"It thus might happen not only that British subjects might be brought without, and even against their will, into conflict with the troops of states in amity or alliance with England, but that they might actually be compelled to take the field against the troops of their own country and sovereign."

A similar case occurred in 1863.

[3] Mr. Charles James Bosdet claimed exemption from military service as a British subject.

[4] He was the eldest son of a Mr. Bosdet, a British subject, who caused himself to be made a citizen of Hamburg in 1843, who had ever since resided there and was then residing there with all his family but his eldest son. Mr. C. J. Bosdet was born in Hamburg and resided there till he was twenty-two years of age.

Mr. C. J. Bosdet having quitted Hamburg, the senate published his name in the list of deserters, thereby subjecting him to certain penal consequences should he return within the Hamburg territory.

It was decided that the enforcement of the decree of the senate within their jurisdiction, should Mr. Bosdet place himself within it, would not constitute any ground for the official interference of Her Majesty's government, and instructions in this sense were accordingly furnished to Her Majesty's chargé d'affaires.

[5] Another case occurred in 1866, in which Mr. C. Dodgshun, born in Hamburg, of a British father, who had become a burgher of that city, claimed exemption from the conscription as a British subject.

It was decided "that Her Majesty's government cannot gainsay the right of the Hamburg authorities to treat him, so far as their jurisdiction is concerned, as a citizen, or to sequestrate his property in Hamburg, though they can have no right to touch the property of his brother and sister."

In August, 1866, another of the Bosdet family appeared as a claimant to British protection.

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[1] To Sir A. Malet, No. 36; May 9, 1864. [2] To Colonel Hodges; March 7, 1851. [3] Mr. Ward, No. 54; September 4, 1863. [4] To Mr. Ward, No. 14; September 30, 1863. [5] Mr. S. Williams; January 15, 1866.

In this instance, the applicant, A. Bosdet, had been born in Jersey, and was resident in Scotland.

[1] Mr. Ward was instructed "that Alfred Bosdet seems to be the son of a native citizen of Hamburg, now a domiciled merchant in that town. The municipal laws of Hamburg treat the son of such a citizen as a subject, and place him, so far their jurisdiction extends, under the obligations of a citizen, one of which is to serve in the Hamburg military force. The fact that Alfred Bosdet was born in England confers on him, according to the law of this country, the character of an English subject; and there arises, or may arise, in these cases a conflict of jurisdiction; but as the law of England also considers the son of a native subject, wherever he is born, as an English citizen, the English government cannot fairly complain of the law of Hamburg, which in this respect is the same; nor can it interfere with the execution of that law within the town of Hamburg. You may accordingly represent to the Hamburg authorities that Alfred Bosdet has become an English subject, and ask, *as a matter of comity*, that his name may therefore be taken off the military list. Mr. Ward cannot be properly instructed to insist, *as a matter of right*, upon this being done."

SAXONY.

[2] In 1865 Mr. Murray asked what was the nationality of a child of foreign parents born on board a British vessel, and of a child born without the British dominions, of foreigners naturalized as British subjects.

[3] Lord Russell replied, "I am of opinion that a child of foreign parents born on board one of Her Majesty's ships of war would be a British subject, wherever the ship might be; and that a child born on board a British merchant or private unprivileged vessel on the high seas would also be entitled to be considered a British subject. It is more doubtful whether such a child born on board such a vessel in the port or waters of a foreign state would be entitled to be considered as a British subject.

"A child born without the British dominion of foreign parents, naturalized as British subjects, would be entitled to be considered as a British subject with reference to all other States but that to which his parents owed an original allegiance, unless indeed that State had, by its own law, allowed its subject to divest himself of his allegiance."

GREECE.

A question arose at Corfu in 1866, relative to the liability of British subjects domiciled as Ionian citizens in that island to be drawn for the conscriptions, and whether they could evade it by renouncing the Ionian naturalization acquired by themselves or their fathers during the British protectorate of the island.

[4] Her Majesty's government thought it would be a reasonable and just concession on the part of the Greek government to allow British subjects, naturalized during the protectorate of Great Britain, to have the option now of renouncing their Ionian and resuming their British nationality, provided this option be exercised without delay, and put on formal record as soon as possible.

But inasmuch as no stipulation to this effect was made in the treaty by which Great Britain renounced the protectorate, they did not think that Her Majesty's government could properly demand, as a matter of right, that such an option should be conceded to them by the government of Greece.

As it has been stated in the house of representatives that Don Pacifico, the hero of the 1847–'48 claims, was a naturalized British subject, it may be as well to mention here that he was a native British subject, having been born at Gibraltar. (State Papers, vol. xxxix, p. 356.)

GUATEMALA.

In 1859 the attention of the Guatemala government having been called to the arrangement which had been come to in Buenos Ayres for the exemption of the children of British residents from military service, Sir Charles Wyke[5] entered into

[1] To Mr. Ward; No. 6, August, 1866. [2] To Mr. Murray, No. 7; April 26, 1865. [3] To Mr. Murray, No. 7; April 26, 1865. [4] To Mr. Erskine, No. 31; November 15, 1866. [5] Sir C. Wyke, No. 1; January 20, 1859.

communications with them with the view of securing a similar exemption for the children of British residents in Guatemala.

In a note dated the 17th of January, 1859, the Guatemala minister stated, "This government acknowledges that the children of British subjects born in this republic, and as such subject by our laws to fulfill the duty of Guatemalans, have also obligations that bind them by the origin of their parents to the country where said parents were born. It acknowledges, likewise, that the discharge of these duties in a new country, and where the government and laws are also new, and not sufficiently firm, must be grievous in cases of civil war, and on account of the military service might bring with it some insecurity that might extend itself to the fathers of families and to the affairs of foreigners settled in the country, and might give rise to complications, or at all events to discussions that ought to be avoided. * * * Therefore, taking into consideration all the circumstances of the case, the government judges it very expedient to obviate by a resolution and a friendly understanding, all the difficulties caused by this inequality of conditions, and to remove for any future occurrence all motives of discussion; and taking into consideration that no serious difficulty presents itself for the reasons already expressed in the making some concession as regards the military service in favor of the sons of British subjects born in the republic, and who as Guatemalans are liable to perform their duties the same as the natives, acceding to the wishes of Her Majesty, *is willing to consider them exempt from said military service until they reach the age of 21 years, and to agree that in all cases when they may be required to perform this service they can find a substitute.*"

Sir Charles Wyke in forwarding a copy of this note to Lord Malmesbury remarked that this arrangement was more favorable than the one arrived at with Buenos Ayres, as it did not require that the substitutes should be foreigners.

[1] [2] Costa Rica, Honduras, Salvador, and Nicaragua, also acceded to this understanding.

ITALY.

[3] The following extract from a dispatch addressed by Sir W. Temple to Mr. Vice-consul Barker in 1837, explains the views of the Neapolitan government in a case of disputed nationality which occurred at that date:

"I have represented to Prince Cassaro the case of Mr. John and Mr. Benedict Stuart, and he is decidedly of opinion, as well as myself, that they are British subjects, and therefore not liable by treaty to be called upon to serve in the sanitary cordon. Their father, Lieutenant Stuart, having been born in England, was a British subject, and his marrying a Messinese made no difference in the nationality of his sons, for, according to law, the wife follows the condition of the husband. Unless, therefore, the sons in coming of age had declared their intention of being naturalized, and had gone through the formalities prescribed by the law for that purpose, they remain British subjects. Prince Cassaro informed me that this question had been already decided in the case of a French subject, and he has promised me that, if it is necessary, he will apply to the minister for the affairs of Sicily for an order to secure these gentlemen from further molestation."

[4] A question was raised by the Sardinian government in 1851 respecting the nationality of John Paul Baptiste Vertu, born at Halifax, Yorkshire, of Sardinian parents. The Turin government contended that he was a Sardinian subject.

[5] Lord Palmerston's instructions to Mr. Hudson were: "I have now to state to you that, as a general principle, children of alien *friends*, born in the British dominions, become *de facto* subjects of Great Britain, although not absolutely, and in all cases, to the entire cessation of all the bonds, privileges, and duties which might attach to them as children of the State to which their parents might belong, particularly when they themselves return to, and abide in, their parents' country, and claim to be, and act as, subjects thereof.

"The right to be considered as British subjects, if fully and completely acquired, and not abandoned or forfeited, may be lawfully extended to them in the foreign state of which their parents were subjects; and it is not necessary, in order to render his children British subjects, that an alien friend transferring his domicil to Great Britain should previously have obtained his legal liberation from his duties and obligations to the state to which he had originally belonged."

[6] In 1843 M. Salteri requested to be informed whether his son, who was born and then resident in England, was liable to the conscription in Tuscany.

Lord Aberdeen replied that his son, having been born and being resident within the

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[1] Mr. Hall, No. 37; June 25, 1859. [2] Mr. Hall, No. 48; August 19, 1859. [3] Sir W. Temple to Mr. Barker, September 16, 1837. (Inclosure in Vice-consul Rickard's No. 14, March 1, 1865.) [4] Sir R. Abercromby, No. 152; December 3, 1851. [5] To Mr. Hudson, No. 9; March 23, 1852. [6] To M. Salteri; July 3, 1843.

dominions of the British Crown, cannot be liable to the conscription law of Italy, or of any other foreign country.

[1] In November, 1864, the Marquis d'Azeglio requested information as to the nationality of Mr. R. E. Sofio, who had claimed exemption from the conscription at Messina as a British subject, although his brother was counsel to the municipality, and as such undoubtedly an Italian.

[2] After some inquiry, it proved that Mr. Sofio had been born at Massina, and the Marquis d'Azeglio was accordingly told that Her Majesty's government could not protect him as a British subject.

[3] Mr. Sofio, who was a merchant at New York, in the meanwhile returned to the United States, having been only a short time in Sicily on commercial business.

[4] In February, 1865, the Marquis d'Azeglio made a similar inquiry respecting MM. Carlo Hammet and Mariano Stuart, (son of the gentleman whose case has been previously referred to,) and Lord Russell then urged the Italian government to abide by the doctrine laid down by the Neopolitan government in 1837.[5]

[6] It seems unnecessary to enter into a detailed account of this correspondence, as the Sicilian law upon which this claim was founded, and which was then in force, has been superseded by the new Italian code. (*See* "Laws of Italy.")

In January, 1866, Mr. Elliot reported the case of Philip Smith, who had been drawn for the conscription at Bologna. General La Marmora refused to except him, on the ground that he came within the provisions of the Sardinian code, his father having resided for twenty years in Italy, and the profession of coachman which the father exercised not being considered "comme un commerce ou une industrie."

The papers were referred to the counsel to the Florence legation, who pointed out that under the new code Smith could declare himself a British subject on attaining his majority, and thus procure his discharge; but that in the meanwhile (he being twenty years of age) he must be considered as an Italian subject, and liable to military service.

This opinion is worth notice, as the age for conscription is generally eighteen; and in countries where a law similar to that of Italy prevails, it follows that the son of a British subject may be called upon to serve in the army from eighteen to twenty-one, when he can become a British subject and discharge himself.

It would certainly seem fairer that the youth should have the option of choosing his nationality when he is called upon to perform the duties of a native. It is obviously an anomaly that a man should be considered old enough to be a soldier, but not old enough to decide whether he would be a citizen.

This anomaly is obviated by the French law.

[7] In April, 1866, M. Rosario Messina claimed British protection in Sicily as a naturalized Maltese. The Italian authorities denied his British nationality, asserting that his naturalization applied only to the island of Malta.

He was informed that his naturalization could not protect him against the law of his native country; the exception of this rule being found in cases in which the country of the original allegiance allows her subjects to put off their allegiance and become the subjects of another country, which was not alleged to be the law of Italy.

In May, 1867, Mr. Elliot requested instructions as to the liability of Messrs. Hall and Hoare, and other British subjects, to contribute to a forced loan levied on mines, and other undertakings in which they were associated with Italians.

[8] Mr. Elliot was instructed that under the fifteenth article of the treaty of commerce, British subjects could claim exemption from such loans being levied on dividends payable to them personally, but they could not claim exemption from loans assessed on the value of the mine or other concern in which they were collectively engaged with Italian subjects who were legally liable to it.

MEXICO.

Earl Russell to Mr Scarlett.

FOREIGN OFFICE, *June* 1, 1865.

[9] "SIR: I have received your dispatch No. 29, of the 23d of March, requesting to be furnished with instructions as to the nature and amount of protection which you should afford to naturalized British subjects in Mexico, and I have now to state to you, for your information and guidance, that the rule laid down in[10] Lord Palmerston's circular of January 8, 1851, is only applicable to persons holding certificates of naturalization

[1] Marquis d'Azeglio; November 28, 1864. [2] To Marquis d'Azeglio; February 6, 1865. [3] Mr. Rickards, No. 15; March 1, 1865. [4] Marquis d'Azeglio; February 16, 1865. [5] To Count Maffei; February 26, 1865. [6] Marquis d'Azeglio; April 4, 1865. [7] Messrs. Walton and Bubb; April 28, 1866. [8] To Sir A. Paget, No. 3; September 5, 1867. [9] To Mr. Scarlett, No. 43. [10] Home Office, May 17, 1865.

granted after that date, and that persons holding such certificates are not to be held entitled to the same rights and capacities in Mexico as a natural-born British subject.

"The protection to be accorded in virtue of Lord Clarendon's circular of May 1, 1854, applies merely to the right of sojourn and of locomotion, but not to protection generally in regard to business pursuits in which naturalized British subjects may be engaged.

"I am, &c.,

(Signed) "RUSSELL."

A question was raised in 1865 as to the liability of British subjects in Mexico to serve in the police and national guard.

[1] Under the advice of the law officers, Mr. Scarlett was instructed that they could properly [2] be called upon to serve in the police, or to pay a tax for exemption, but not in the national guard, which might be used for active military service.[3]

[4] In May, 1865, Mr. Scarlett forwarded a copy of a decree recently published in Mexico, by which the illegitimate children born of foreigners and Mexican women, as well as those foreigners who may acquire landed property in Mexico, are to be considered as Mexican subjects.[5]

He was instructed that "the decree respecting illegitimate children seemed to furnish no reason for remonstrance from foreign governments, except, perhaps, so far as it extended to the illegitimate children born of Mexican women in foreign States ('dentro ó fuera del territorio del Impero,') a matter, however, of little practical importance."

"The decree as to foreigners acquiring landed property should be protested against in so far as it was made retrospective, and that time should be allowed to such aliens to determine whether they would retain their property, and to enable them to dispose of it without injury or loss accruing from this *ex post facto* law.

"With regard to its prospective operation, though it would be severe on foreigners, especially if the words '*propiedad territoria*' extend to shares in mines and leases of land and houses, yet it was within the competence of the Mexican government to pass such a law."

[6] Mr. Benjamin Crowther, a British subject who had served in the army of the so-called Confederate States, having applied to Mr. Scarlett for protection, Lord Russell instructed Mr. Scarlett in November, 1865, that "a British subject who has neither been enrolled as a citizen nor naturalized in America, ought not, on the ground of his having served on either side during the civil war, to be deprived in a third country like Mexico of all British protection."

[7] M. Saviñon, a Mexican by birth, having claimed British protection as a British naturalized subject, Mr. Scarlett's conduct in refusing it to him in Mexico was approved November, 1865.[8]

MONTE VIDEO.

See dispatch from Mr. Canning to Mr. Vice-consul Dale, December 20, 1842, previously cited.

NETHERLANDS.

[9] In 1861 a case arose in which the Dutch government claimed the military service of Daniel Swan, a British subject born in Scotland of British parents and subsequently domiciled in the Netherlands.

It appeared that the existing Dutch law was in favor of the claim of the Dutch government; but a clause was proposed to be added to a militia bill then before the States General which, if liberally construed, would suffice to provide for the exemption thereafter of British subjects similarly situated.

[10] The clause introduced into the militia bill by the Second Chamber of the States General was as follows: "A foreigner shall not be considered an inhabitant if he belongs to a State where a Dutch subject is not liable to compulsory military service, or where the principle of reciprocity is received with respect to liability for service."

[11] Some doubt having been expressed whether, under this clause, British subjects were exempt, the Dutch Government addressed a note to Sir A. Buchanan on the 26th of April, 1861: "Il a été décidé qu'aussi longtemps que les sujets Néerlandais établis dans la Grande Bretagne, qui ne sont pas naturalisés sujets Britanniques, y seront effectivement exempts du service militaire, soit en vertu de la coûtume ou des dispositions administratives, soit en vertu d'actes législatifs spéciaux, les sujets de Sa Majesté

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[1] Law officers, May 22, 1865. [2] Law officers, June 20, 1865. [3] To Mr. Scarlett, No. 50; June 26, 1865. [4] Queen's Advocate; June 9, 1865. [5] To Mr. Scarlett, No. 51; June 26, 1865. [6] To Mr. Scarlett, No. 83; November 1, 1865. [7] Queen's Advocate; November 7, 1865. [8] To Mr. Scarlett, No. 2; November, 1865. [9] Sir A. Buchanan, Nos. 19, 23, 31, 32, and 33. [10] To Sir A. Buchanan, No. 34; July 13, 1861. [11] Sir A. Buchanan, No. 77; August 28, 1861.

Britannique jouiront, également dans le Royaume des Pays Bas à partir de la mise en vigueur de la dite nouvelle loi, du bénéfice de la disposition de l'Article 15, qui exempte, à titre de réciprocité, les étrangers établis dans le Royaume de l'obligation de satisfaire à la militaire."

A clause was at the same time introduced into the militia bill, exempting from the conscription the absent sons of residents who were not Netherlands' subjects, thereby preventing the recurrence of a case like that of Swan.

[1] In the instructions addressed to Sir A. Buchanan, Lord John Russell observed: "There is no practical liability imposed on aliens in England to serve in the militia, inasmuch as the militia ballot is not in fact resorted to; even their theoretical liability thereto is a matter not free from legal doubt; and they are under no liability at all to compulsory military service in the army."[2]

NORWAY.

By the Norwegian military law of 1857 "foreigners who have acquired a fast domicilium in the country" are rendered liable to military duty.[3]

A case occurred in 1861 in which Mr. Walter Foreman claimed British protection against the conscription, and he was advised to try the question before the Supreme Court as provided by the law of 1857.

If a convention existed British subjects would be exempt by the express terms of the law; but in the absence of such a convention they could only appeal to the principles of equity, and ask for exemption on the ground that Norwegians were not subjected to any such military service in England.

PERSIA.

Lord Palmerston to Mr. Sheil.

"SEPTEMBER 4, 1850.

"The principles upon which, as stated in your dispatch No. 87, of the 22d of July, you are in the habit of acting, in regard to granting passports and affording protection to natives of India, appear to me to be correct. The only question would be whether children born in British India of parents subjects of the Shah, can properly be placed under British protection while resident in Persia.

"In Europe the international law would be against such an arrangement. Children born in England of parents of subjects of a foreign state would be entitled to be considered as British subjects everywhere but in the country to which their parents belong, always assuming that the law of that country considers children born to native subjects while out of the country to be as much native subjects as if they had been born in the country.

"But though that would be the international rule in Europe, yet, considering the different and peculiar habits and practices of Asia, it seems to me that, considering that all persons born in British India, of whatever parents, are entitled to be regarded as British subjects, so far as concerns any privileges and advantages which attach to that character within the British dominions, it would be fair and right to extend to such persons, even in Persia, the benefits of being placed under British protection; and especially if they had resided in British India for any time, so as to have been practically domiciled therein."[4]

Lord J. Russell to Mr. Alison.

"FOREIGN OFFICE, *August* 25, 1860.

"SIR: I have had under my consideration Sir Henry Rawlinson's dispatches No. 50, of the 29th of March, and No. 57, of the 11th of April last, inclosing a register of persons enjoying, and claiming to enjoy, British protection in Persia, and requesting definite instructions for his guidance in regard to what constitutes the right of a person to be considered a British subject, and to claim British protection in Persia.

"It does not appear that the Persian government has actually raised any objections, or that any case has arisen urgently calling for a decision as to the nationality or right to protection of any individual or class of persons; but as Sir Henry Rawlinson appeared to apprehend that difficulties would arise, and desired to be instructed beforehand what course he was to adopt in each case, as and when it might occur, I have to observe—

"First, that I am ignorant as to what is the course adopted on the points in question

[1] Sir A. Buchanan, No. 34; July 13, 1861. [2] To Sir A. Buchanan, No. 18; July 29, 1861. [3] Mr. Crowe, Nos. 48 and 49; November 2, 1861. Mr. Crowe, No. 2; March 15, 1862. [4] To Colonel Sheil, No. 82; September 4, 1850.

by the other European governments having diplomatic relations with Persia, more particularly France and Russia; and having regard to Articles IX, XI, and XII of the treaty of March 4, 1857, as well as to the necessity of not conceding in practice to Persia more than is conceded to her by these powers on the subject in question, it is impossible for me to furnish you with definite instructions on this head.

"Secondly, I have to point out to you the impracticability of following out strictly, in relation to Persia, or any other Mahometan power, the principles of international law prevailing between Christian powers, so far as regards nationality and the right to protection. This impracticability is abundantly apparent from Sir Henry Rawlinson's dispatch No. 57 of the 11th of April, in which, whilst insisting upon the propriety of conceding, as it were, a reciprocity in point of principle to Persia in the matter of national *status*, he nevertheless suggests, in particular instances, doubtless on strong grounds of policy, the propriety of entirely disregarding or departing from any such principle in actual practice, as, for instance, in the case of the Masulipatan Newal referred to at No. 10, Class VI, in the list inclosed in his before-mentioned dispatch.

"Thirdly, I have to state to you that no new rule or practice, as to the extending or limiting the application of the existing system as to British protection, ought to be adopted, unless it be made common to other powers, especially France and Russia; no such new rule or practice should be retrospective; and no person now enjoying British protection should be deprived thereof by the application or operation of any such new rule or practice.

"With respect, moreover, to the class of cases particularly adverted to by Sir Henry Rawlinson, namely, the children of Persian fathers born in the Queen's dominions and afterward returning to Persia, I have reason to believe that in Turkey such persons habitually enjoy British protection, unless, indeed, they act in such a manner as to forfeit the right thereto, and to show that they have 'elected' the Turkish nationality of their fathers; and I have to state to you, that I see no reason to depart from the instructions laid down on this head by Viscount Palmerston in his dispatch No. 82, of the 14th of September, 1850, to Lieutenant-Colonel Sheil.

"Subject to the above remarks, and considering the question apart from all considerations of usage, policy, or expediency, but exclusively and strictly with reference to the principles of international law prevailing amongst Christian nations, I have to state to you that a child of a Persian father, born in the Queen's dominions and returning to Persia, will not, whilst in Persia, be entitled to British protection, if (as stated) the law of Persia considers him a Persian subject by reason of his Persian descent; and on this principle Syud Abdullah could not, whilst he remained in Persia, be claimed, or claim to be treated there, as a British subject. Although, therefore, this would be the correct rule of international law, yet, as it has not been hitherto acted on in Persia, I think it very inexpedient that it should now be made a rule of English procedure there, unless it is also made common to all other European nations, and especially France and Russia.

"You will be guided by what I have stated above, when called upon to interfere on behalf of persons having a claim to British protection.

"I am, &c.,

"J. RUSSELL."[1]

A correspondence took place in 1862 respecting the right of the British consul-general at Bagdad to afford protection to the children of a person named Ali Agha, who was born in India, but was of Persian descent, the Persian government having asserted that the children ought to be placed under the protection of the Persian consul at Bagdad.[2]

Mr. Alison was instructed that the British consul-general was authorized upon the principle of the law, and warranted by the usage applicable to the subject, to take under his protection the sons of Ali Agha while they continued resident at Bagdad.[3]

In 1867, the British resident at Bushire raised a question as to the nationality of the grandson of a British Indian subject born in Persia.

Mr. Alison was instructed that such a person was a British subject by the British statute law, and as such entitled to the good offices of British authorities; but in the case where the father had been domiciled, and the son resident in Persia, it was not reasonable to claim the latter as a British subject, so as to withdraw him from the operation of the laws of his parent state.[4]

PERU.

In 1851, Mr. Vice-Consul Nugent requested to be informed whether he was to register as British subjects the children of British residents born in Peru, and whether children so registered, born of a Peruvian mother, were exempt from conscription.[5]

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[1] Mr. Alison, No. 64. [2] Mr. Alison, No. 184; October 26, 1862. [3] To Mr. Thomson, No. 4; December 31, 1862. [4] To Mr. Alison, No. 15; November 12, 1867. [5] From Mr. Nugent; February 1, 1851. To Mr. Adams, No. 6; August 23, 1851.

Her Majesty's chargé d'affaires was directed to furnish Mr. Nugent with instructions on the latter point founded upon those addressed to him on the 17th of February, 1848.

These instructions were substantially the same as those given to Mr. Vice-Consul Dale, (*vide ante.*)

PORTUGAL.

"*The Earl of Aberdeen to Lord Howard de Walden.*

"FOREIGN OFFICE, *June* 10, 1843.

"MY LORD: I have received your lordship's dispatch No. 111, of the 25th of May, stating that you had informed the Portuguese minister for foreign affairs that Her Majesty's government cannot for an instant admit the right claimed by the Portuguese government to consider as Portuguese subjects all persons born in Portugal, notwithstanding that they may be the issue of foreigners residing in that country.

"I think it necessary for your information to put you in possession of the opinion of the Queen's advocate-general upon several cases which have arisen in foreign countries, and in which the right referred to in your dispatch has been questioned.

"The substance of that opinion is, that although by the statute law of this country all children born out of the allegiance of the King, whose fathers, or grandfathers by the father's side, were natural-born subjects, are themselves entitled to enjoy British rights and privileges while they are within British territory, yet the effect of British statute law cannot extend so far as to take away from the government of the country in which those persons may have been born, the right to claim them as natural-born subjects, at least so long as they remain in that country.

"By the common law of England, all persons born within the King's allegiance, whether the children of British subjects or of foreigners, are deemed to be natural-born subjects of the Crown of England; and if the law of any foreign state upon this point be the same as the English law, and if such foreign state places persons born within its territory upon the same footing as its own subjects or citizens, the government of that state has the right to exact the service of a subject from such persons, even if they may have been the children of foreigners, at least whilst such children remain in the country of their birth.

"It may be necessary that I should add that the children or grandchildren by the father's side, of natural born-British subjects, born in any other country than Portugal, are entitled to be protected by you, in Portugal, as natural-born subjects of the Crown of Great Britain; but the children of British fathers born in Portugal cannot be protected by you against the operation of the laws affecting the subjects of Portugal, unless the laws of that country withhold from the child of a foreigner the rights of a Portuguese subject."

PRUSSIA.

In reply to inquiries from Lord Bloomfield,[1] Lord Clarendon furnished him with the following instructions in 1855:

"1st. That a woman, a British-born subject, who has married a foreigner, puts on the status of her husband, and during the continuance of that coverture is not entitled to claim the protection of Her Majesty's legations abroad.

"2d. The same woman, on becoming a widow, is entitled to re-assume the character of a natural-born British subject; but her children by her alien husband, if born abroad, follow the nationality of their father, except that by virtue of the 3d section of the 7 & 8 Vict., cap. 66, they are made capable of taking any estate, real or personal, by devise or purchase or inheritance in England.

3d. As already stated, the mother, whilst under coverture, follows the condition of her husband, and is an alien; but the children, as well during as after the coverture, are entitled to the privileges conferred by the 3d section of the 7 & 8 Vict., cap. 66.

"4th. During coverture by an alien husband the mother cannot demand a British passport. When 'discouverte' she may demand one. The children, however, are aliens and cannot demand passports as British subjects either during or after coverture."

In 1862, Mr. Crossthwaite,[2] Her Majesty's consul at Cologne, requested to be informed whether, he having been naturalized as a Prussian subject, his sons were liable to the Prussian conscription.

It was decided that the sons of a naturalized Prussian subject (owing allegiance to

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[1] To Lord Bloomfield, No. 249, August 11, 1865. [2] Law officers: November 5, 1862.

Her Majesty) who are between the ages of 17 and 25, and are resident in Prussia would be compellable to serve in the Prussian army.

In 1865 it was decided that a M. Renkewitz,[1] a person born in the British colony of Tobago, of a Saxon father and a Danish mother, and who had not resided in British territory since he was seven years of age, might properly receive a British passport from the Berlin embassy.

In October, 1867, the Prussian chargé d'affaires, with a view to the controversy between the Prussian and United States Governments, made an inquiry as to the liability to serve in Her Majesty's army and navy of British subjects who, having emigrated to a foreign country and become naturalized citizens of that country, subsequently return to their native land.

Count Bernstorff[2] was informed "that no practice has prevailed in England since the peace of 1815, which has any bearing on the question of the treatment in Prussia of these subjects of the King of Prussia, liable to military service, who, after they have emigrated to a foreign country, and been naturalized there, come back again to Prussia, inasmuch as the practice in England has always been, both before and since the peace of 1815, to recruit the royal army by voluntary enlistment.

"On the other hand, the militia of the counties which used to be called out by ballot has ceased to be so called out since 1829, and on the last occasion when the militia was embodied, during the Russian war in 1854, the quota of each regiment was furnished by volunteers. There has thus been no opportunity for a tacit practice to grow up either in regard to the army or the militia, under which any privilege of exemption from the liability to military service should become established in Great Britain in favor of those subjects of the Queen who, after they have emigrated and been naturalized abroad, have returned to Great Britain.

"With regard to the royal navy, the same observations apply, as the practice of impressment has been allowed to fall into desuetude, and the royal navy has been for some time recruited by voluntary enrollment."

RUSSIA.

In 1857 Madame von Essen applied to Lord Wodehouse,[3] at St. Petersburgh, for a British passport, to enable her to be recognized as a British subject by the Russian authorities, she being the widow of a Prussian who had been naturalized in Russia.

Lord Wodehouse was instructed "to grant her a passport if she can show that she was a natural-born Englishwoman, and that she forfeited upon the death of her husband the rights she acquired in Russia as the wife of a naturalized Prussian subject; but if she did not forfeit these Russian rights, you will inform Madame von Essen that she cannot under such circumstances be provided with a British passport, more especially as she appears to have no intention of leaving Russia."

The Queen's advocate remarked, in regard to this case, that there was no *law* as to the right of a British-born subject to a passport, and that it would be very inexpedient to lay down any inflexible rule in such matters. The primary intention and use of a passport was for traveling purposes, and it was for the secretary of state to give such directions from time to time as he might think fit as to the grant of passports in special cases, having regard to the conditions as to domicile and residence in a foreign country, under which such applications were made.

Shortly afterwards Consul-General Mansfield[4] inquired whether a Polish lady married to an Englishman could legally be entered in her husband's *passeport de séjour* as a British subject. He was told that during marriage she became entitled to the *status* and civil rights of her husband, and consequently to the protection of the British government as a British subject.

In 1862 a question arose as to the *status* of British Jews in Russia.

Her Majesty's embassador[5] was instructed that, having regard to the language of the treaty between Great Britain and Russia of 1859, and to the facts stated with reference to the legal *status* of Russian Jews in their own country, Her Majesty's government would not be justified in claiming exemption for British Jews in Russia from the disabilities to which Russian Jews are there liable by law. The effect of the first and eleventh articles of the treaty was to place British subjects on the footing of Russian subjects before the law, each class being alike, and one not more than the other amenable to all general laws applicable in like cases. Russian subjects, being Jews, incurred certain disabilities, and the equality intended and provided by the treaty was not infringed by British subjects who are Jews, whilst residing there, also sharing the same disabilities. In 1865 the British factory at St. Petersburg wished to obtain a re-

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[1] December 4, 1865. [2] To Count Bernstorff; November 15, 1867. [3] Lord Wodehouse, No. 12; January 3 1857. Queen's Advocate; January 15 and 21, 1857. To Lord Wodehouse, No. 69; January 21, 1857
[4] Consul-General Mansfield, No. 16; February 24, 1857. [5] To Lord Napier, No. 105; May 15, 1862.

vision of the sixth section of the Russian naturalization law relating to children born after their parents had adopted Russian allegiance, with reference especially to the fact that previously to 1862 no alien could carry on business in Russia without being naturalized, and that the new law of 1864 made no provision for the denaturalization of persons who had assumed Russian nationality before it was passed.

Sir A. Buchanan[1] was instructed to assist the factory as far as he could.

At the same time he was warned that it was impossible to press upon the Russian government the law of England as a complete reason for the desired concession.

"The present law[2] of England would allow a Russian merchant to carry on his business in Great Britain without being naturalized, and so far the doctrine of reciprocity might be made available: but, on the other hand, the law of England considered that allegiance, whether acquired by birth or by naturalization, is indelible, except, perhaps, in the case of a conflict of duty between the obligations of the naturalized foreigner to the state to which he originally belonged and Great Britain.

"A Russian could exercise wholesale and retail trade in England on the same footing as a British subject, with the exception that he could not lease land or house for a longer term than twenty-one years without being naturalized. A Russian could not,[3] according to the theory of the law, put off the allegiance acquired by naturalization, though practically he would do so if he returned to his own country, except, perhaps, in a case of war between Russia and England."

In March, 1867, Mr. George Wolff[4] applied to Sir A. Buchanan for a British passport. Mr. Wolff was born in England of a Hanoverian father and English mother, had resided in England until he was eleven years of age, and had never claimed Hanoverian nationality.

Under these circumstances, Sir A. Buchanan was told that he might give notice to the Russian authorities of Mr. Wolff's name being withdrawn from the family passport, and give him a separate passport as a British subject.

SPAIN.

Her Majesty's Consul at Cadiz[5] having requested instructions in 1841 as to the claims of the sons of British subjects born in Spain to exemption from the conscription, he was informed that as British law considered all persons born in Great Britain to be British subjects, Her Majesty's government could not urge the claims of persons born in Spain to British protection as against the laws of that country.

Lord Aberdeen, however, pointed out that by the Spanish constitution of 1837 it was declared that all persons born in Spain were Spaniards, but when that law was passed it was interpreted by the Spanish government to mean that such persons have the right of being admitted to the privileges of Spanish subjects *at their option*, and that if it was thereby meant that the children of aliens born in Spain were aliens unless they declared their option of becoming Spaniards, it might be contended that the sons of British parents so situated, who had not made such a declaration, remained British subjects, and, as such, exempt from conscription.

By article 24 of the Royal Decree[6] of 17th November, 1852, it was provided that persons domiciled or traveling in Spain, as well as their sons, who had not chosen Spanish nationality, should be exempt from military service, with the exception of those whose parents were born in Spanish territory.

In 1856 a question arose as to the interpretation of this law, and certain persons, grandsons of native British subjects, claimed exemption in the face of it.

The case was referred to Lord Clarendon, who decided that the claim was inadmissible.

In 1861, however, it appeared that Her Majesty's consuls in Spain still continued to claim to protect the grandsons of British subjects from military service, and Lord Russell[7] then gave instructions that they should desist from doing so.

Further correspondence passed between Sir J. Crampton and Lord Russell[8] on this subject in 1862, and the following dispatch was addressed to Sir J. Crampton (July 9, 1862):

"I have to state to you that with regard to the general question I have nothing to add to the instructions conveyed to you in my dispatch No. 164, of the 17th December last, to which her Majesty's government adhere.

"With respect to the particular cases of Lieutenant Arguimban and his son Mr. Joseph Arguimban, and to any other cases which may come under the same category,

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[1] Sir A. Buchanan, No. 21. [2] Queen's Advocate; January 31, 1865. [3] *See*, however, previously as to British naturalization, the certificates of which, as at present granted, are canceled by absence from England without license beyond a certain specified time. [4] Sir A. Buchanan, No. 80; March 12, 1867. [5] Consul Brackenbury, Nos. 6, 9, 9, 11, 1841. To Consul Brackenbury, No. 4; November 5, 1841. [6] Lord Howden, No. 96; March 25, 1856. [7] To Sir J. Crampton; Dec. 11, 1861. [8] Sir J. Crampton, No. 197; May 2, 1862. To Sir J. Crampton, No. 139; July 9, 1862. Law officers; July 7, 1862.

I am advised that they should be determined by the domicile of the parents at the time of the birth of the children within the territories of the Crown of Spain. If at the time of the birth of Lieutenant Arguimban, his father was not only a natural-born British subject, but legally domiciled in the British dominions, I am of opinion that Lieutenant Arguimban himself was at the time of his birth a British subject, owing permanent allegiance to the British Crown, and entitled to British protection. If, on the contrary, his father was then domiciled in the dominions of the Spanish Crown, he became a Spanish subject, and is not entitled to claim British protection against any obligations resulting from his Spanish allegiance, although by an English statute he may be also entitled to the privileges of a natural-born British subject in Great Britain.

"The same observations apply to the case of Mr. Joseph Arguimban, whose position is likewise dependent on the allegiance and domicile of his father at the time of his birth.

"The fact of Lieutenant Arguimban and one of his sons being officers in the royal navy tends *prima facie* to show that the domicile of Lieutenant Arguimban, if originally in England, did not afterwards cease to be so; but even this point would not be conclusive if that gentleman has resided for a long time in the Spanish dominions, and I am advised that no length of service in the army or navy of Great Britain would be material for the purpose of the present question if the allegiance and domicile of the person engaged in such service were originally Spanish.

"I should add that, even in the case of persons owing permanent allegiance to the British Crown, but domiciled and resident in Spain, the claim to exemption from military service in Spain cannot justly be extended on their behalf to any services required for the legitimate purposes of internal defense only, and which do not involve any act at variance with the duties of their British allegiance."[1]

SWITZERLAND.

Lord Palmerston to M. Drouey, president of the Swiss Confederation.

"OCTOBER 16, 1859.

"The undersigned has the honor to acknowledge the receipt of the note addressed to him in the name of the Federal Council in Switzerland by M. Drouey, president of the Confederation, requesting to be made acquainted with the provisions of the English law as regards the cases in which foreigners lose their rights of nationality.

"In reply, the undersigned has the honor to inform M. Drouey that he is not aware of any case in which a British-born subject can lose his right of nationality unless he should be deprived of it by an act of Parliament.

"It is well established that a natural-born British subject cannot put off his allegiance to the British Crown by any act of his own, not even by swearing allegiance to a foreign power; and though it is not illegal for a British subject to contract engagements with a foreign power with the license of the British Crown, yet such engagements do not affect his national status according to the English law, and the license so given may be revoked at any moment.

"But though a British subject cannot get rid of his national character, he may so misconduct himself, either by committing piracy, or in other ways, as to forfeit all claim to the protection of the British government."

In 1863 the Swiss government claimed to include in the conscription, at Geneva, two brothers, named Fournier, born in England, but whose father had been naturalized subsequently to their birth as a citizen of Geneva.

As the young men were both of full age, and had done nothing to forfeit their British character, Her Majesty's minister at Berne was informed that they came within the meaning of the term "British subjects" in the sixth article of the treaty of 1855, and, as such, were exempt from Swiss military service.[2]

In 1865 a question arose whether an English company, (the European Central Railway Company,) whose direction and agent was located in the canton of Tessin, was entitled to the support of the British legation.[3]

Admiral Harris was instructed "that this English company has not forfeited its right to the protection of the British legation, because in the act of concession the technical domicile of the company ('la direction technique du chemin de fer') is to be considered as being in the canton where the board of administration of the company is situated. The distinction between different kinds of domicile is familiar to all jurists. The domicile which incorporates a foreign citizen into the state in which he is

[1] The tenor of this dispatch seems inconsistent with the doctrine previously held by the British government, as it makes the nationality of the son to depend on the domicile of his father instead of the the place of his own birth. It is to be presumed that the instruction was framed with reference to the peculiar law and usage of Spain, and was not intended to lay down any general principle applicable to other countries. [1] To Admiral Harris, No. 16, April 22, 1863. [2] To Admiral Harris, No. 2, November 20, 1865.

resident is wholly distinct in its character and consequences from the domicile which is assigned by the state to a foreign subject with relation to certain legal acts or liabilities. Such a domicile is for the purpose of founding jurisdiction in the event of legal proceedings being taken, either by him or against him in the country in which he is resident. The domicile specified in the concession for the company is of this nature, and falls under this category; but it does not affect the right of the company to the intervention of its government for the purpose of preventing an act of injustice being done to it by the foreign government. The intervention, however, of the British legation in Switzerland should be strictly confined to such a case, and should not attempt to interfere with the ordinary course of the municipal law in its operation upon the rights and liabilities of the company."

In 1866 Mr. J. G. Roch protested against being called upon for military service in Switzerland as a Genevese.[1]

Mr. Roch's grandfather was a Genevese by birth, having been born in a territory ceded by Sardinia to Geneva in 1816 by a treaty, one of the conditions of which was that those so born should, being Christians, be considered as Genevese. By the law of that canton the national character is inalienable, and extends to the grandchild.

As Mr. Roch lived and was domiciled at Geneva, Admiral Harris was informed that the claim to exemption could not be put—the English law on the same subject being duly borne in mind—upon the high ground of strict right. The claim could only be preferred upon the lower ground of usage and convenience.[2]

TUNIS.

Lord Palmerston to Sir T. Read.

"JANUARY 16, 1840.

"SIR: Mr. Ancram, in his dispatch No. 14, of the 2d of June, 1838, reported the case of a young Maltese girl, Grazia Abela, the wife of a Maltese, who had been persuaded to embrace the Mahomedan religion, but who afterward desired to recant. Mr. Ancram, it appears, made thereupon an application to the bey that the girl should be restored to her husband, but the bey refused to restore her. Since that time I have heard nothing further from Mr. Ancram or from yourself on this subject; and I would hope that the bey, on further reflection, may have been induced to give up the girl. But if that should not have been the case, I have to instruct you to state, by a written note to the bey, that all the subjects of Her Majesty are free to change their religion, if they think fit to do so, and the British government never interferes with the conscience of British subjects; but that every person who is born a subject of the British Crown must, by the law of England, continue, during life, to owe allegiance to the sovereign of Great Britain; and, on the other hand, every such person is entitled, during life, to the protection of the British Crown.

"The woman in question, having been born in Malta, is a British subject; and, though she is at liberty to embrace the Mahomedan religion if she shall think fit to do so, she cannot thereby cease to be a British subject, and she is as much entitled to British protection as if she had remained a Christian. The law of Tunis may be different; but the British government has nothing to do with that law, and Great Britain never can permit the laws of any foreign state to interfere with the indissoluble connection which binds a British-born subject to the British Crown.

"Moreover, marriage is, by the law of England, a tie which can only be dissolved by an act of the British legislature, and Her Majesty's government never can permit any foreign government to assume that a marriage legally contracted between two British subjects can be dissolved by the circumstance that one of these parties has changed their religion.

"Her Majesty's government, therefore, expect that this Maltese woman shall be placed under your protection, in order that she may have an opportunity of freely choosing whether she will return to her husband and her country, or remain where she is.

"I am, &c.,

"PALMERSTON."

In 1865 Mr. Wood reported that he had sent to Malta a Maltese family consisting of a widow and minor children, who had been induced by distress to embrace the Mahomedan religion.

As the children of a Maltese father, during their minority, remained British subjects, and it was assumed that the application made for their removal to Malta had been at the instance of their next relation or friend, Mr. Wood's proceedings were approved.[3]

[1] Mr. J. G. Roch, March 16, 1866. [2] To Admiral Harris, No. 21, March 29, 1866; Queen's advocate, April 14, 1866; Queen's advocate, May 8, 1866; Queen's advocate, May 21, 1866. [3] Queen's advocate, January 13, 1865.

The question as to the protection of British subjects in the East does not come within the scope of this memorandum, but it would require careful attention in case any alteration of the present law of allegiance were contemplated.

The following instruction was addressed, in 1849, to Mr. Murray respecting the amount of protection to be granted, in Egypt, to aliens who had obtained letters of naturalization in England:[1]

"Your inquiry arises out of three questions which have been put to you by Mr. Walne, Her Majesty's consul at Cairo; and I will give answers to those questions.

"The first question is, whether Greek houses in Egypt, being branches of establishments belonging to Greeks who have been naturalized in England, are entitled to protection?

"Upon this point I have to answer that those members of such houses who are not naturalized British subjects cannot claim for themselves nor for their branch house British privileges, merely because another member of the house residing elsewhere has been naturalized in England.

"The second question is, whether British protection is to be extended in Egypt to subjects of the kingdom of Greece who have obtained letters of naturalization in England and have returned to the Levant?

"The answer to this is, that, if these persons have been legally naturalized in England, they are entitled everywhere but in the kingdom of Greece to the privileges of British subjects.

"The third question is, whether Greek rayahs, resuming their residence in the Ottoman territory, after having obtained naturalization in England, are to be protected?

"The answer is, that these persons cannot, within the country of their natural allegiance, that is to say, within the Ottoman Empire, claim to be considered British subjects, because natural allegiance in the country of a man's birth overrides privileges obtained by naturalization elsewhere."

In 1851 this instruction was modified as regards Mr. Cassavetti, a Greek naturalized British subject resident in London, and Her Majesty's consul-general in Egypt was instructed to afford to his branch establishments at Cairo and Alexandria the same protection as would have been afforded to the branch establishments of an English firm.[2]

A similar instruction was sent to Mr. Consul Brant in the case of Mr. Calimachi, a Greek, the agent, at Trebizond, of Mr. Mathew Schilizzi, a resident in London.[3]

In 1855 like protection was extended to Messrs. Bogni and Kotti, Greek agents, at Galatz, for M. Theologo.[4]

In 1856 Mr. P. Theologo was informed that his naturalization would not entitle him to protection in Turkey, he having been born in Broussa in Asia Minor.[5]

In 1858 protection in Egypt was refused to Mr. Giro, a native of Lemnos; but, in the following year, it was decided that, bearing in mind the peculiar relations between Egypt and the Porte, he might properly receive British protection in Egypt, unless the Egyptian authorities objected.[6]

In October, 1859, a question was raised as to the nationality of Mr. John Aslan, born at Cerigo, but who had not complied with the provisions of the Ionian law in order to constitute himself an Ionian citizen.

Eventually it was arranged that protection should be afforded to him until he had an opportunity of returning to the Ionian Islands and completing his naturalization there.[7]

In 1861 Mr. Sophocles Theologo was informed that his agent at Galatz was not entitled to personal protection for himself or his concerns; but that the interests he represented, as the agent of a naturalized British subject resident in London, would be entitled to such protection.[8]

In April, 1861, an application was made for British protection on behalf of the estate of a bankrupt, Mr. Rodocanachi, a native of Scio, who had been naturalized as a British subject in 1855.[9]

As his certificate of naturalization contained an express exception of "any rights and capacities of a natural-born British subject out of or beyond the dominions of the British Crown and the limits thereof," (the usual clause at that date,) and Mr. Rodocanachi was at Constantinople in no danger of molestation, Her Majesty's government refused to interfere.

In the case of Themistocles George Aslan, who claimed to have his declaration of part-ownership in a British vessel registered at the Cairo consulate in 1861, it was decided that the question of Mr. Aslan's right to have his declaration of part-ownership in a British vessel attested at the British consulate at Cairo depended not upon the terms of his letters of naturalization, nor upon the circumstance of his having or not having a

[1] To Mr. C. Murray, consular, No. 13, November 17, 1849. [2] To Mr. D. Cassavetti, February 22, 1851. [3] To Mr. Brant, consular, No. 4, August 26, 1852. [4] To Mr. Theologo, January 12, 1855. [5] To Mr. P. Theologo, February 8, 1856. [6] To Mr. Giro, September 7, 1858; to Mr. Muller, No. 2, February 14, 1859. [7] To Mr. Colquhoun, consular, No. 36, December 9, 1850. [8] To Mr. Theologo, November 11, 1861. [9] Messrs. Wilson, Dodgshun, and Papayanni, April 2, 1861.

foreign passport, but upon the provisions of "the Merchant Shipping Act, 17 and 18 Vic., cap. 104, sec. 18." By that act persons who are naturalized by or pursuant to statute are rendered capable of being owners or part-owners of a British ship only if they "are and continue to be, during the whole period of their so being owners, first, resident in some place within Her Majesty's dominions, or second, if not so resident, members of a British factory or partners in a house actually carrying on business in the United Kingdom, or in some other place within Her Majesty's dominions." Mr. Aslan, it appeared, was not a person fulfilling the first of these conditions, but it did not appear whether he was or was not a member of a British factory, or a partner in a house actually carrying on business within Her Majesty's dominions. If he was, the application made by him to the British consul at Cairo ought to be complied with; if not, he was by law incapable of being owner or part-owner of a British ship, and the ship of which he was owner or part-owner could not be deemed to be British; in which case the consul ought not to attest his declaration.[1]

The clause in Mr. Aslan's letters of naturalization excepting from the grant "any rights and capacities of a natural-born British subject out of and beyond the dominions of the British Crown and the limits thereof," was intended only to prevent the person thereby naturalized from claiming, by virtue of his naturalization, as against foreign governments while within their territories, the benefit of the *status* of a British subject. It was not intended to be applicable to the right and capacity of the person naturalized, (provided he fulfills the requirements of the Merchant Shipping Act,) to be and continue, while locally resident beyond the limits of Her Majesty's dominions, an owner or part-owner of a British ship, and to do, while there, all acts proper to be done by him in that character. Such a right is not one of which any foreign locality can be predicated, merely because the person entitled to it may happen to be residing abroad; it is in its nature essentially a British right, its subject being a British ship having its port of registry within the dominions of the British Crown, and, if locality was to be ascribed to it at all, it must follow the port or domicile of the ship, and not the residence of the owner.

In December, 1862, Mr. Sophocles Theologo was informed "that a foreign house, having foreign interests, although connected with the English house, and being conducted by foreigners and in a foreign country, cannot claim the protection of a British consul, except in so far as the direct interests of British subjects, apart from those of foreigners, are involved."[2]

In 1864 Sir E. Hornby was authorized to register Messrs. Cuppa as British subjects, reserving any rights of allegiance which might be preferred against them by the country of their birth.

These gentlemen were Ionians by birth, sons of an Ionian who had commanded, as a British naval officer, a scampavia or gunboat, in the war with France, and they claimed, accordingly, to be British subjects, under the act 13 Geo. II., cap. 3.[3]

In the case of M. Mavrogodato,[4] in 1866, it was decided that "although in strictness a foreigner who is merely naturalized in Great Britain has no title to British protection abroad, the good offices of Her Majesty's representatives may as a general rule be properly extended to such persons elsewhere than in the dominions of the state to which they owe natural allegiance;" and that such claim as M. Mavrogodato might have to those good offices in the Ottoman dominions must be "subject to the determination of any question which may be raised by the Turkish government, arising out of his place of birth, and that if that question is raised M. Mavrogodato must be prepared to establish to his excellency's satisfaction that he forms one of a class of persons over whom the Porte has renounced its right of regarding them as its subjects, notwithstanding their birth in its territory."

VENEZUELA.

A question arose in 1851 whether the illegitimate children of British parents, born in Venezuela, were entitled to be registered as British subjects at Her Majesty's consulates.[5]

Sir John Dodson, then Queen's advocate, considered that such persons might be taken to be British subjects *for the purposes of registration only*, but that their claim to British nationality could not be asserted against an actual adverse claim of the Venezuelan government to treat them as natural-born citizens.

It having been pointed out to Sir John Dodson that this opinion seemed to be at variance with a report which he had previously made in the case of a Mr. Stratford, when he had stated that the illegitimate children of British parents born abroad were not en-

[1] Acting consul at Cairo, No. 25, May 30, 1861. Law officers, August 9, 1861. [2] To Mr. Theologo, December 24, 1862. [3] Sir E. Hornby, No. 42; June 22, 1864. Law officers; July 23, 1864. [4] May 14, 1866. [5] Mr. Riddel, consular, No. 42; August 12, 1851. Queen's Advocate; January 19, 1852. Law officers; February 3, 1852.

titled to be considered as British subjects in foreign countries, Sir John Dodson replied that the question was one of much difficulty, in which the other law officers should be consulted.

This was accordingly done, and on the 3d of February, 1852, the law officers advised that illegitimate children born abroad, of English parents, are not British subjects, and therefore not entitled to British protection. By the common law children born abroad of English parents were not, except in certain special cases, English subjects. Acts of Parliament have been passed to remedy this inconvenience, but these acts, from their particular purposes and wording, can only be held to apply to legitimate children.

During the discussion of the British claims on Venezuela, in 1865, the Venezuelan government objected to the insertion of certain claims in the British schedule, on the ground that the claimants were citizens of Venezuela.

In support of the principle on which this objection was based, they quoted at considerable length passages from Wheaton, Blackstone, Sir R. Phillimore, and other jurists, showing the doctrine of native nationality held by England.[1]

With regard to the particular case of Venezuela, the foreign secretary stated, (July 27, 1865:) "Now, in this country it has been judged suitable, for many reasons, to establish that all that are born in its territory are Venezuelans. It has been thus declared in the constitutions that have ruled the country since 1821. In the long process of time which has elapsed, it has been understood that the fact of being born in Venezuela carries with it the obligation of naturalization. A controversy which originated with the Spanish legation in 1847 for pretending to include in the matriculation of subjects of Her Catholic Majesty persons born in Venezuela, although of Spanish parents, might be cited.

"During the war of five years, on an occasion which created difficulties, and to avoid others, the executive power deviated, in one single instance, from the common practice, that of the young man Alexander d'Empaire, and declared him exempt from military service, as a minor, being under the protection of his father, and not having signified his wish to become a citizen of Venezuela. But that resolution cannot be considered definite, for it is not given to the executive power to point out the sense of the constitution. The President understood it to be so, and mentioned it in his message to Congress in 1861, asking that a law should interpret the constitutional rule. Nothing was then resolved. The question was still undecided when the constituent assembly met in 1863; the government insisting for a termination, it pronounced itself in this manner in article 6 of the federal constitution:

"'Venezuelans are: 1. All persons born, or who may be born, in the territory of Venezuela, whatever may be the nationality of their parents.

"'2. The children of a Venezuelan father, or of a Venezuelan mother, born in other territories, who may fix their residence in this country, and shall express their desire to be considered as such.'

"It therefore appears that there can be no doubt as to the meaning of the legislators, and if a more explicit declaration has been asked for, it is owing to its being considered that it should come directly from them."

On the 23d of October, 1865, Mr. Edwardes,[5] under instructions from Lord Russell, replied: "Her Majesty's government are of opinion that the general principles on which his excellency founds his particular position are sound; though it is to be observed that by treaty stipulation, and by long usage, one state may concede to the subjects of another privileges which are not accorded to its own subjects. Many circumstances may make such a usage not impolitic or unreasonable."[2]

"Her Britannic Majesty's government are, moreover, of opinion that when such usage is abrogated by the municipal law, ample time should certainly be given to the subjects of the state from whom the privilege is withdrawn to make up their minds whether they will remain in, or leave, the country in which this change in their former relation to it has been effected.

"M. Seijas will perceive, from the foregoing opinions, that although her Britannic Majesty's government offer no opposition to the change which the Venezuelan government desire to make in the position of children born to British subjects in Venezuela, they are far from admitting its power of retroaction.

"The undersigned, therefore, being unable to see how the solution of the question at issue can possibly affect the settlement of claims already pending, avails himself, &c."[3]

The Venezuelan government rejoined, on the 22d of November, 1865, that it was not a question of passing a new law, but of interpreting a principle which had been (with the exception of the French case previously referred to) maintained since the foundation of the republic.

In January, 1866, Lord Clarendon[4] instructed Mr. Fagan, "that Mr. Edwardes appears to have stated the matter very properly to the Venezuelan government. It seems clear that the new law ought not to affect the position of British claimants

[1] Mr. Edwardes, No. 66; August 23, 1865. [2] Mr. Edwardes, No. 89; October 25, 1865. [3] Mr. Harrison, No. 5; December 9, 1865. [4] To Mr. Fagan, No. 3, January 16, 1866.

whose claims had accrued previously to the passing of this law; and the argument that the law is not retroactive, but explanatory, is inadmissible.

"Previously to the passing of it, practice and usage had interpreted the law as treating the children of foreign subjects, though born in the Venezuelan territory, as foreigners. To pass a law now, explaining that the law had never meant to consider such persons as foreigners, is substantially to pass a retroactive law to the injury of foreigners."

In November, 1865, Mr. Edwardes[1] forwarded a list of claims admitted by the Venezuelan government. This list includes the claims of persons alleged to be British subjects, although born in Venezuela, and a note is appended to their names showing that these claims were admitted subject to their nationality being proved.[2]

Negotiations are now pending for the settlement of these admitted claims, together with any other claims not yet investigated, by a mixed commission, when the right of these Venezuelan natives to British nationality will again come under discussion.[3]

CHAS. S. A. ABBOTT.

FOREIGN OFFICE, *March* 5, 1868.

ADDENDA.

(A.)

OPINION OF MR. CALEB CUSHING.

RIGHT OF EXPATRIATION.

Citizens of the United States possess the right of voluntary expatriation, subject to such limitations, in the interest of the state, as the law of nations or acts of Congress may impose.

ATTORNEY-GENERAL'S OFFICE, *October* 31, 1856.

SIR: I have to apologize to you for having omitted to reply at an earlier day to your communication, inclosing extract from a letter addressed to Mr. Vroom, minister of the United States in Prussia, by the Count de Montgelas, minister of Bavaria at the same court, and requesting me to consider the question of law propounded by the Count de Montgelas.

The question is, "Whether, according to the laws of the United States of America, a citizen thereof, when he desires to expatriate himself, needs to ask either from the Government of the United States, or of the State of which he is the immediate citizen, permission to emigrate; and, if so, what are the penalties of contravention of the law?"

It might suffice, perhaps, for me to say that there is no provision of law on the subject in the Constitution of the United States, or in any act of Congress; and that, therefore, a citizen of the United States, desiring to emigrate, is free to do so, without express consent of the Government of the Union; and that no law of any one of the States forbids the citizen thereof to emigrate, or imposes any penalties on him if he do so without the consent of such State.

This naked statement, however, though a substantial response to the inquiry, leaves out of view some relations of the subject, which, in deference to the possible wishes of the Count de Montgelas, it may be desirable to expose.

In the popular discussions of the United States, it is common to assume that the theory of their political organization requires, and that their laws admit, unlimited right of emigration.

This impression is partly derived from the fact that the United States, having so recently by force made themselves independent of Great Britain, ideas of right, which belong to revolutionary epochs, still predominate over those of duty, which belong to the regular action of all political society, and the importance of which grows more and more apparent with every year's duration of the Union.

To justify the supposition of unlimited right of emigration, it is common to appeal to the provisions of the Constitution of the United States, and of its laws regulating the naturalization of foreigners. These provisions do, indeed, show that the encouragement of foreign emigration is a feature of the public policy of the United States, and suggest implication that, in the spirit of international equity, we shall concede to our own citizens a reciprocal faculty of emigration, and of foreign naturalization, involving abjuration of allegiance to the Union.

[1] Mr. Edwardes, No. 93; November 9, 1865. Mr. Edwardes, No. 97; November 22, 1865. [2] Mr. Irving's memorandum; February 2, 1867. [3] To Mr. Fagan, No. 4; January 30, 1868.

Acting on these impressions, attempts have been made from time to time in the Congress of the United States to legalize the right of emigration; but, on all such occasions, careful scrutiny has made evident the fallacy of the popular assumption, and has caused the whole subject to be left, as it now stands, as a question of our public law, unsolved in its complete generality—but with elements of solution, which have not failed to strike the observation of many jurists and statesmen of the United States.

To begin: it is true, as the tenor of the question of the Count de Montgelas implies he presumed might be the case, that the conditions of citizenship of the United States and of any one of the States are not identical; that is to say, it may happen that by the laws of a given State a person shall be a citizen thereof, and still not be a citizen of the United States. Nor does it follow, because he is a citizen of a given State by the very letter of its laws, that therefore he is of every or any other State. Persons may be, and in fact are, citizens of the State of Massachusetts, that is, invested with all the rights, political and municipal, which its institutions can bestow, without being citizens of the State of Virginia, or of the United States. But the distinctions which exist in this respect are not very important in international relations; and so far as they are anywise material they will come up incidentally in considering the duties and the rights of citizens of the United States.

Neither in the Constitution nor in the laws of the United States is there any definition of citizenship. The Constitution, which is the organic law of the Union, confines the exercise of all the great functions of state to citizens, and some of these functions to natural citizens; and it empowers Congress to enact laws of naturalization. Such laws have been enacted, and provide in effect that any free white alien, after five years' residence in the country, and two years' intermediate declaration of intention to become a citizen, may become such on his making proof of good character, and abjuring, in certain prescribed forms, all foreign allegiance, and taking oath of allegiance to the United States. And many ordinary municipal rights are, by other laws, capable of being enjoyed by citizens alone: such as the ownership of merchant-ships, the command and in part the manning of such ships, and the purchase of public lands by pre-emption.

To this may be added, that in many of the States the right to own land within the same is by their laws restricted to citizens of the United States. But I repeat, citizenship, whether acquired by birth or by naturalization, is not a thing specifically defined in its elements, either by the Constitution or by the laws of the Union.

Nor is there in the Constitution or laws of the United States any general provision to define how the rights of citizenship may be lost, or its duties be made to cease, whether by one's own act or by that of the Government.

And in the codes of the States there is occasional confusion of thought, arising from the want of proper attention to the difference between the enjoyment of mere civil rights, the right of suffrage, and the right of citizenship as a political status of persons, independent of their sex, age, or condition. Thus women, minors, and some other persons, do not possess the right of suffrage in any of the States, although citizens of the United States, and it is possessed in some of the States by persons who are not citizens of the United States.

As to citizenship and its termination, though we do not find them defined by any law of the Union, still we may gather the prevailing thought of the nation on the subject, by inspecting the legislation of some of the States.

In truth, we must divide the people of the United States into two classes: those in the full enjoyment of all the rights of citizenship, and those deprived of some or all of those rights; and then we must distinguish between such of the inhabitants of the country as are citizens, and such as are subjects only, and whether capable or not of becoming citizens, yet not so at the present time. I allude, in the latter case, to the Indians who, in some of the States, are the subjects of the State in which they exist, but who are in general subjects of the United States; and to the Africans, or persons of African descent, who, being mostly of servile condition, are of course not citizens, but subjects, in reference as well to the respective States in which they reside as to the United States.

In the sequel of these remarks it will be seen that the distinction between citizens and subjects in the United States is material to the just appreciation of the question of the right of emigration in its domestic relations, and still more in its foreign relations, and especially as admonitory of candid consideration of the laws regulating emigration, which exist in some of the countries of Europe.

These are prefatory considerations. I proceed now to state how far limitations of the right of emigration are imposed in fact by the laws either of the Union or of individual States.

The Union, as already explained, has not as yet undertaken to formalize any general law, either of citizenship or of emigration. One of the States, Virginia, has done this; and its express legislation on the subject, though imperfect, is quite suggestive, and leads directly to important reflections.

The code of Virginia contains the following provisions:

"All free white persons born in this State, all free white persons born in any other State of this Union, who may be or become residents of this State, all aliens being free white persons naturalized under the laws of the United States, who may be or become residents of the State; all persons who have obtained a right to citizenship under former laws, and all children, wherever born, whose father, or if he be dead, whose mother shall be a citizen of this State at the time of the birth of such children, shall be deemed citizens of this State.

"2. Whensoever any citizen of this State, by deed in writing, executed in the presence of and subscribed by two witnesses, and by them proved in the court of the county or corporation where he resides, or by open verbal declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this State, and shall depart out of the same; such person shall, from the time of such departure, be considered as having exercised his right of expatriation, so far as regards this State, and shall thenceforth be deemed no citizen thereof.

"3. When any citizen of this State, being twenty-one years of age, shall reside elsewhere, and in good faith become the citizen of some other State of this Union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another State, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this State.

"4. No such act of becoming the citizen or subject of a foreign state or sovereign, and no act under the second section shall have any effect if done while this State or the United States shall be at war with any other foreign power." (Revised Code, tit. ii.)

Without stopping to comment on the conditions of citizenship here laid down, let us attend to the conditions of its relinquishment. These are two, namely: 1. Solemn declaration of intention to emigrate, with actual emigration. 2. Residence elsewhere, that is, actual emigration from the State, and the assumption in good faith of citizenship in some other State of the Union, or of allegiance to a foreign state or sovereign.

But the rights thus defined are of the change of citizenship, which involves emigration; not of pure emigration. The law does not comprehend the case of subjects of the State.

And the rights accorded are with significant restriction: they cannot be exercised in time of war. That is, the legislator, while nominally admitting the general rights of citizens to emigrate, reflected that it would not answer to leave the right without such limitation, at least, as to deprive the citizen of the power to abstract himself from the public service in certain emergencies by emigration, or under the same emergencies to shelter acts of treason under pretenses of emigration.

Thus, in the very act of legalizing emigration, the State of Virginia declares expressly that the right is, in its judgment, subject to the paramount rights of the State.

How could it be otherwise? If the state owes protection to the citizen, does not the citizen owe service to the state? Above all, in a republican country, in which the state is but the congregation of the citizens, are not the interests of all bound up together into a unity of common interest, so that rights are but correlative to obligations? The assumption of the unlimited right of emigration would make of the inhabitants of a country a mere collection of individuals each pursuing blindly his own passionate or narrow view of his apparent personal interests, instead of an organized political society combining individual right with public power, and maintaining the true rights of individuals as well against individual wrong-doers as foreign foes, by means of the aggregate force of the state. But of this more hereafter.

To return to the actual laws of Virginia. These, in formalizing the right of emigration, impose restrictions upon it, and thus recognize the public right of restriction.

But other restrictions of the right are found in the laws of the same State.

A citizen of Virginia, it is clear, does not effectually cast off any private obligations of his, whether relating to person or property, by pretense of emigration. He may, it is true, be sheltered by the foreign jurisdiction, and thus enabled to evade legal obligations existing in the State of Virginia; but those obligations do not the less continue in force within that State until discharged by its laws. This doctrine comprehends citizens of that State *a fortiori* its subject.

But the more material question is of the obligations of citizens to the State itself. And here, the proposition is a general one; thus, a citizen of the State of Virginia cannot, by emigration, discharge himself of any obligation to the State, the nonperformance of which involves by its laws any penal consequence. If he leave the State under any such circumstances, though under pretense of expatriation, he is a fugitive from justice, not a lawful emigrant; the State will demand his extradition from the State to which he assumes to emigrate, and obtain it, in virtue of an express provision of the Constitution of the United States; and the State will itself deliver up, on demand, any such person undertaking to emigrate to it from any other State. (Code, tit. x, ch. 17, § 8–16.)

The State of Kentucky imitated the State of Virginia in this respect, repeating in

substance, and almost in the same words, the enactment of the latter as well as to citizenship as expatriation.

No other State of the Union has, so far as my observation extends, attempted to solve these interesting questions by express legislation.

The constitution of the State of Pennsylvania declares that "emigration from the State shall not be prohibited," (art. ix, § 25.) The same provision is contained in the constitution of the State of Indiana, and, it may be, of some other States. But this declaration is to be taken subject to all the qualifications which have been exhibited in discussing the institutions of the States of Virginia and Kentucky.

The nature of these qualifications may be illustrated further, by supposing the militia of the State of Pennsylvania or of Indiana to be in the field. If a discontented soldier in the ranks undertakes to escape his duties by professed emigration, will that profession be admitted by the State? Undoubtedly not. It will reply that desertion cannot be covered up under the cloak of emigration; in a word, that emigration or expatriation cannot shelter a criminal act, and is of necessity subject to conditions of the service of the State.

If we pass now to the legislation of the United States we shall encounter a series of provisions which confirm the conclusions already drawn from the legislation of the States, involving the general doctrine that a citizen of the United States cannot, of right, discharge himself by emigration from subsisting obligations, either private ones or to the Union.

In the first place, the Federal Government recognizes the general doctrine that a citizen or subject cannot, by pretense of expatriation, relieve himself from any existing penal liability to the Union, or to any one of its States. It provides by the Constitution and by laws for the extradition of fugitives from service or crime as between the States respectively; and it provides, by numerous treaties and by laws for the extradition of fugitives from justice as between the United States and foreign governments.

Nor, in the second place, can it be doubted that the same doctrine may be applied in the United States to some cases in which the act of expatriation is itself, in motive as in fact, an evasion of duties to the state. Thus, we should not be prepared to admit that a soldier in the Army, or a seaman in the Navy, can, by pretense of expatriation, relieve himself from the charge of desertion; or an officer of the Army or Navy on the same pretense anticipate and escape a charge of treason involved in the very act of expatriation.

To the contrary of this, we have the case reported of one Elijah Clark, who was tried and sentenced as a spy during the last war between the United States and Great Britain, although he had professedly emigrated to Canada. (Breckenridge's Miscellanies, p. 409.)

For there is unanimity of opinion among jurists and statesmen alike, that expatriation, even if admitted of general right, must not involve any collateral violation of law or of duty to the State or to fellow-citizens. "The laws do not admit," says Mr. Jefferson, "that the bare commission of crime amounts, of itself, to a divestment of the character of citizen, and withdraws the criminal from their coercion." (Letter to Mr. Morris, August 16. 1793. American State Papers, Foreign Relations, vol. 1, p. 169.)

This remark of Mr. Jefferson's is the more significant, inasmuch as he applied it to the very case of alleged emigration as the cover of acts in violation of the neutrality of the United States.

But here debate opens. The Government of the United States commenced with successful revolution; it was organized on the hypothesis of allowing the largest range to individual volition compatible with public safety; the people of the United States are composed of emigrants from Europe, most of whom expatriated themselves in order to escape from oppression, or, if you please, legal impediments to personal action, in the countries of their birth—and many of whom were the actors and the victims of revolutions or of civil wars. Thus it happens that the sympathies of the people of the United States, and to a certain degree their laws, tend to admit full freedom of expatriation, under all circumstances. where the inducement is political opinion or action.

Accordingly, the United States, while readily entering into treaty stipulations with foreign governments for the reciprocal extradition of persons accused of mere municipal offenses, have never conceded, and, of course, never asked the extradition of persons accused of political offenses, or other acts in derogation of mere allegiance.

Meanwhile, in matters akin to this in principle, though apparently distinct, the legislators and the courts of the United States have exhibited much uncertainty of opinion, consequent on the popular assumption of a theory of unlimited right of emigration, and the undeniable difficulty of reconciling that theory to some of the exigencies of public security and peace.

For the preservation of the neutrality of the United States, we have enacted laws which forbid foreign recruitments in the country, or the equipment of expeditions

therein, by land or sea, for the purpose of hostilities against any government with which the United States are at peace. These enactments proceed on the sound hypothesis that the right of war belongs only to states, not to individuals. These enactments also recognize the fact that no country can permit its inhabitants to make war on the inhabitants of another country, without giving just umbrage to the latter, violating the principles of natural justice and of international law, and thus in the end superinducing war between the two governments. Nothing can be plainer than the position that the body-politic should determine the question of peace or war through its appointed agents, legislative or executive. And no government, which respects its own dignity, or desires to maintain its independence and sovereignty, will suffer unauthorized individuals to wield at will this the highest of all the political functions of a state.

The remarks of Mr. Jefferson are pertinent and conclusive on this point. In a dispatch of his already quoted, he says:

* * * "If one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens. But this is not true, either on the general principles of society or by our Constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true, and no citizen has a right to go to war of his own authority; and for what he does without right he ought to be punished.

"Indeed nothing can be more obviously absurd than to say all the citizens may be at war, and yet the nation at peace." (*Ubi supra*, p. 161.)

Of course, laws of this description are just in themselves and conformable to reason; and, as such, have been constantly maintained by the United States.

In this condition of the law, a case of prize, in which one of the questions was whether the capture was invalidated by reason of the cruiser having been fitted out in the United States, in violation of law, came up for adjudication in the Supreme Court of the United States; and, as incidental to this question, there was elaborate discussion at the bar, of the right of expatriation, induced by the fact that the commander of the cruiser assumed, as preparation for that command, to have renounced his allegiance to the United States. (Talbot *vs.* Janson, iii Dallas's Rep., p. 383.)

It clearly appeared in the case that the cruisor was armed and fitted out in fraud of the law; and for that reason the prize was restored to her owners. Two of the judges, Chief Justice Rutledge and Justice Wilson, rested on this point, with but brief allusion to the question of expatriation; but the other three spoke of this in terms not to be mistaken.

Justice Patterson made the significant remark, "It is an obvious principle, that an act of illegality can never be construed into an act of emigration or expatriation. At that rate treason and emigration, or treason and expatriation would, in certain cases, be synonymous terms."

To which he added the query, "Can that emigration be legal and justifiable which commits or endangers the neutrality, peace, or safety of the nation of which the emigrant is a member?"

Justice Cushing calls attention to the necessity of proving the *bona fides* of an alleged act of expatriation; which is the more essential in the case of persons who engage in illegal military enterprises under the guise of emigration, and who do not, in purpose or fact, renounce their allegiance to their native government, and do not hesitate to claim its protection when they become involved in difficulties by reason of their illegal undertaking.

But Justice Iredell entered fully into the general merits of the subject, as follows:

"That a man ought not to be a slave; that he should not be confined, against his will, to a particular spot, because he happened to draw his first breath upon it; that he should not be compelled to continue in a society to which he is accidentally attached, when he can better his situation elsewhere, much less when he must starve in one country, and may live comfortably in another, are positions which I hold as strongly as any man, and they are such as most nations in the world appear clearly to recognize.

"The only difference of opinion is as to the proper manner of executing this right.

"Some hold that it is a natural, unalienable right in each individual; that it is a right upon which no act of legislation can lawfully be exercised, inasmuch as a legislature might impose dangerous restraints upon it; and, of course, it must be left to every man's will and pleasure to go off, when, and in what manner, he pleases.

"This opinion is deserving of more deference, because it appears to have the sanction of the constitution of the State, (Pennsylvania,) if not of some other States in the Union.

"I must, however, presume to differ from it, for the following reasons:

"1. It is not the exercise of a natural right in which the individual is to be considered as alone concerned. As every man is entitled to claim rights in society, which it is the duty of the society to protect, he in his turn is under a solemn obligation to discharge all those duties faithfully which he owes as a citizen to the society of which he is a member, and, as a man, to the several members of the society, individually

with whom he is associated. Therefore, if he has been in the exercise of any public trust, for which he has not fully accounted, he ought not to leave the society until he has accounted for it. If he owes money he ought not to quit the country and carry all his property with him, without leave of his creditors. Many other cases might be put, showing the importance of the public having some hold of him until he has fairly performed all those duties which remain unperformed, before he can honestly abandon the society forever. But, it is said, his ceasing to be a citizen does not deprive the public, or any individual of it, of remedies in these respects. Yet, the right of emigration is said to carry with it the right of removing his family and effects. What hold have they of him afterward?

"2. Some writers on the subject of expatriation say a man shall not expatriate in a time of war, so as to do a prejudice to his country. But, if it be a natural unalienable right, upon the footing of mere private will, who can say this shall not be exercised in time of war as well as in time of peace, since the individual upon that principle is to think of himself only? I therefore think, with one of the gentlemen for the defendant, that the principle goes to a state of war as well as peace, and it must involve a time of the greatest public calamity as well as the profoundest tranquillity.

"3. The very statement of an exception in time of war shows that the writers on the law of nations, upon the subject in general, plainly mean, not that it is a right to be always exercised without the least restraint of his own will and pleasure, but that it is a reasonable and moral right, which every man ought to be allowed to exercise, with no other limitation than such as the public safety or interest requires, to which all private rights ought and must forever give way.

"And if in any government principles of patriotism and public good ought to predominate over mere private inclination, surely they ought to do so in a republic founded on the very basis of equal rights, to be perfectly enjoyed in every instance where the public good does not require a restraint.

"4. In some instances, even in time of war, expatriation may fairly be permitted. It ought not, then, to be restrained. But who is to permit it? The legislature, surely, the constant guardian of the public interest where a new law is to be made or an old one dispensed with. If they may take cognizance in one instance, (as, for example, in time of war,) because the public safety may require it, why not in any other instance, where the public safety for some unknown cause may equally require it? Upon the eve of a war it may be still more important to exercise it, as we often see in case of embargoes.

"5. The supposition that the power may be abused is of no importance if the public good require its exercise. This feverish jealousy is a passion that can never be satisfied. No man denies the propriety of the legislature having a taxative power. Suppose it should be seriously objected to, because the legislature might tax to the amount of 19*s.* to the pound. They have the power, but does any man fear the exercise of it? A legislature must possess every power necessary to the making of laws. When constructed as ours is, there is no danger of any material abuse. But a legislature must be weak, to the extremest verge of folly, to wish to retain any man as a citizen whose heart and affections are fixed on a foreign country in preference to his own. They would naturally wish to get rid of him as soon as they could, and therefore, perhaps, the proper precaution would be to restrain acts of banishment, (if such could be at all permitted,) rather than to limit the legislative control over expatriation. But is there no danger of abuse on the other side? Have not all the contentions about expatriation in the courts arisen from a want of the exercise of this very authority? For if the legislature had prescribed a mode, every one would know whether it had or had not been pursued, and all rights, private as well as public, would be equally guarded; but upon the present doctrine no rights are secured but those of the expatriator himself. I, therefore, have no doubt that, when the question is in regard to a citizen of any country whose constitution has not prohibited the exercise of the legislative power in this instance, it not only is a proper instance in which it may be exercised, but it is the duty of the legislature to make such provision, and for my part I have always thought the Virginia assembly showed a very judicious foresight in this particular."

It is impossible to misapprehend the general effect of the opinion expressed by Mr. Justice Iredell. It disaffirms unlimited right of expatriation. It reserves all the rights of the State in the premises. (Sergeant's Constitutional Law, p. 319.)

Indeed, when this case first made its appearance in the admiralty court of the State of South Carolina, under all the influences of local sympathies to bias him, the judge, (Bee,) in maintaining the right of expatriation and emigration, expressly adds the conditions "Where no legal prohibition exists, and no prejudice is done thereby." (Jansen *v.* The Christina Magdalena, Bee's Rep., pp. 11, 23.)

This was in the year 1794. In the year 1799 the same question recurred, but under different circumstances. Indictment was found in the proper court of the United States against a person, a natural citizen of the United States, charged with acts of hostility against a foreign government, who pleaded that he had expatriated himself, and become the subject of the belligerent state, in whose service he committed the acts of hostility. But the plea was overruled by the court, (Chief Justice Ellsworth,)

and the party was convicted and sentenced. (The United States *v.* Williams, 2 Cranch's Rep., p. 82, note.)

In this case the Chief Justice said, and said truly, that the political society, that is, the whole body of the citizens associated in a government, had rights as well as its individual citizens; and that the latter had no rights to be enjoyed to the destruction of the whole society. He also said with truth that "The most visionary writers on this subject do not contend for the principle in the unlimited extent that a citizen may at any and at all times renounce his own and join himself to a foreign country." These views, it is clear, are in accordance with the spirit and letter of the existing laws of the States of Virginia and Kentucky.

The opinion expressed by the Chief Justice on this occasion was much criticised at the time; but with the less reason, considering, as the facts in the case indicate, that the party assumed foreign allegiance only for the special purpose, and then returned to reclaim his ancient rights as a citizen of the United States.

No laws in any country would be capable of execution if men were allowed to oscillate thus between different allegiances, at the dictate of caprice or self-interest.

There was another act of Congress, in the execution of which questions of the same class came once again before the Supreme Court of the United States.

During the partial estrangement which occurred between the United States and the French Republic, at the close of the last century, an act of Congress was passed which for the time being prohibited all commercial intercourse with France on the part of persons resident within the United States, or under their protection; and subjected to forfeiture all vessels employed in the prohibited commerce, and belonging to persons residing in the United States, or to citizens thereof residing elsewhere. It contained other provisions in the same spirit, not material to the present question.

While such was the law a vessel was captured, and came before the courts of the United States for adjudication under circumstances which raised the question whether the owner fell within the scope of persons to whom commerce with France was prohibited.

This person was born in the State of Connecticut before it became independent of Great Britain, and thus might, perhaps, have claimed the rights of citizenship in the United States. But he went to the Danish island of Saint Bartholomew's at an early age, married, and was domiciled there, and became a subject of Denmark.

Upon these facts, the whole question of expatriation passed in review before the Supreme Court. The court, by Chief Justice Marshall, disposed of it in these words:

"Jared Shattuck, having been born within the United States, and not being proved to have expatriated himself according to any form prescribed by law, is said to remain a citizen, entitled to the benefit and subject to the disabilities imposed upon American citizens; and, therefore, to come expressly within the description of the act which comprehends American citizens residing elsewhere.

"Whether a person born within the United States, or becoming a citizen according to the established laws of the country, can divest himself absolutely of that character, otherwise than in such manner as may be prescribed by the law, is a question which it is not necessary at present to decide. The cases cited at bar, and the arguments drawn from the general conduct of the United States on this interesting question, seem completely to establish the principle that an American citizen may acquire, in a foreign country, the commercial privileges attached to his domicile, and be exempted from the operation of an act expressed in such general terms as that now under consideration. Indeed, the very expressions of the act would seem to exclude a person under the circumstances of Jared Shattuck. He is not a person under the protection of the United States. The American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of our Government; and if, without the violation of any municipal law, he should be oppressed unjustly, he would have a right to claim that protection; and the interposition of the American Government in his favor would be considered a justifiable interposition. But his situation is completely changed where, by his own act, he has made himself the subject of a foreign power. Although this act may not be sufficient to rescue him from punishment for any crime committed against the United States, a point not intended to be decided, yet it certainly places him out of the protection of the United States while within the territory of the sovereign to whom he has sworn allegiance, and consequently takes him out of the description of the act.

"It is, therefore, the opinion of the court, that the Charming Betsy, with her cargo, being at the time of her recapture the *bona-fide* property of a Danish burgher, is not forfeitable in consequence of her being employed in carrying on trade and commerce with a French island." (Murray *vs.* Schooner Charming Betsy, 2 Cranch, pp. 64, 119.)

It is observable that the court carefully abstain from asserting any unlimited right of expatriation. Nor was any such right pretended among the eminent counsel, Messrs. Key, Alexander J. Dallas, and Martin, who argued the case. On the contrary, it was conceded on all hands, in the words of Mr. Dallas, "that a man cannot expatriate himself unless it be done in a fit time, with fairness of intention, and publicity of act."

At the commencement of the last war between the United States and Great Britain, this question again presented itself in two cases of great interest, where, however, the main question being of the effect of commercial domicile on the national character, the doctrine of expatriation was touched only, without being elucidated. (The Venus, 8 Cranch, p. 253; the Francis, *ibid.*, p. 335.) In each of these cases, the party concerned was a native of Great Britain, who, after coming to the United States and being naturalized here, returned to Great Britain, and there resided at the time of the declaration of war. Laying aside all consideration, either of naturalization or of expatriation, the Supreme Court, in discussing the effect of their commercial domicile in the enemy's country, conceded to them, for the argument's sake, all the rights of native Americans.

Soon after this, in the question of the ownership of a vessel as bearing upon the question of domestic or foreign bottom, Mr. Justice Washington said:

"I do not mean to moot the question of expatriation, founded on the self-will of a citizen, because it is entirely beside the business before the court. It may suffice for the present to say that I must be more enlightened on this subject than I have yet been, before I can admit that a citizen of the United States can throw off his allegiance to his country without some law authorizing him to do so." (United States *vs.* Gillies, 1 Peters's C. C. Rep., p. 159, 161.)

Finally, at a later period, the same question came before the Supreme Court, and was argued by eminent counsel, including Mr. Tazewell and Mr. Webster, in exposition of a clause of the existing treaty between the United States and Spain, which prohibits the citizens or subjects of the respective contracting parties from taking commissions to cruise in private armed vessels against the other, under penalty of being considered pirates. On this occasion Justice Story, in delivering the opinion of the court, made the following observations:

"This view of the question renders it necessary to consider another, which has been discussed at the bar, respecting what is denominated the right of expatriation. It is admitted by Captain Chayton, in the most explicit manner, that, during this whole period, his wife and family have continued to reside at Baltimore; and, so far as this fact goes, it contradicts the supposition of any real change of his own domicile. Assuming, for the purposes of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country—as to which we give no opinion—it is perfectly clear that this cannot be done without a *bona-fide* change of domicile, under circumstances of good faith. It can never be asserted as a cover for fraud, or as a justification for the commission of a crime against the country, or for a violation of its laws, when this appears to be the intention of the act. It is unnecessary to go into a further examination of this doctrine; and it will be sufficient to ascertain its precise nature and limits when it shall become the leading point of a judgment of the court." (The Santisima Trinidad, 7 Wheaton, pp. 283, 357.)

There is one other important relation of the subject in which it has come before the Supreme Court of the United States, and that is in the discussion of questions of allegiance as bearing on the rights of property of persons who, though natives of the United States, yet left the country on its revolutionary separation from Great Britain. It is the celebrated question of the *ante-nati*, discussed in Calvin's case, (7 Co. R., p. 18 b.,) and previously determined by Bracton. (De Legibus Angliæ, fol. 427 b.)

In disposing of such cases, the Supreme Court has occasionally, and at a relatively late time, referred to the question in very expressive language. Thus, in one of them, Justice Thompson assumes that "allegiance may be dissolved by the mutual consent of the Government and its citizens and subjects," (Inglis *vs.* Sailors' Snug Harbor, 3 Peters's R., pp. 99, 125;) and in another Justice Story says, "The general doctrine is, that no persons can, by any act of their own, without the consent of the Government, put off their allegiance and become aliens." (Shanks *v.* Dupont, *ibid.*, pp. 242, 247.)

Here, in so far as regards the views of the Supreme Court or its members, the matter stands; unadjudicated as decision, but not undetermined as opinion. After carefully reviewing the whole subject, Chancellor Kent pronounces the better opinion to be, that a citizen cannot renounce his allegiance to the United States without permission of the Government, to be declared by law. (Commentaries, vol. 2, p. 49.) It is a significant fact, at all events, that, on so many occasions when the question presented itself, not one of the judges of the Supreme Court has affirmed, while others have emphatically denied, the unlimited right of expatriation from the United States.

This exposition of the opinions on the question of the right of expatriation by the judicial authorities of the United States would be incomplete without some brief statement of what has occurred on the subject in the courts of the States.

Observations on the subject occur in sundry cases of the class already spoken of, where the main question was of land belonging to persons who were born in the United States before their separation from Great Britain, but adhered to the mother-country. As the law of England maintains the unalterable perpetuity of allegiance, and as that of England, transmitted to many of the States of the Union, denies the capacity of aliens to hold lands, the question of citizenship repeatedly came before the courts in the early years of the republic.

In such a case in the State of Massachusetts, its supreme court, by Chief Justice Parsons, say:

"Protection and allegiance are reciprocal. The sovereign cannot refuse his protection to any subject, nor discharge him from his allegiance against his consent; and he will remain a subject, unless disfranchised as a punishment for some crime. So, on the other hand, he can never discharge himself from his allegiance to his sovereign, unless the protection which is due to him from the laws is unjustly denied him." (Ainslie *v.* Martin, 6 Mass. R., p. 460.)

Here a most important feature of the rightfulness of the claim of society, as against the citizen, is indicated, namely, that the laws of the country afford him due protection.

In a case of the same character in the State of Pennsylvania, her supreme court, by Chief Justice Tilghman, speaks of a "principle not compatible with the constitution of Pennsylvania or her sister States; that is to say, that no man can, even for the most pressing reasons, divest himself of the allegiance under which he was born." (Jackson *v.* Burns, 3 Binney's R., pp. 75, 85.)

Allusions to the point as being yet unsettled occur in the State of Alabama, in a case where distinction between emigration and expatriation is well suggested. (Beavers *v.* Smith, Ala. R., N. S., vol. 11, pp. 20, 29.)

The doctrine is touched, also, in several cases involving matrimonial rights, as affected by domicile or citizenship; but without any result of importance. (See Bishop on Marriage, b. 7.)

But, of the cases in the several States, those adjudged by the courts of Virginia and Kentucky are the most important, because of the special laws of those two States on the subject of citizenship; and these cases also possess intrinsic interest.

Controversy arose in the State of Virginia, in a matter not material to be here explained, which presented the immediate question of expatriation from the State, but involved in argument that of expatriation generally. (Murray *v.* McCarty, 2 Mumford's R., p. 393.)

In this case Judge Cabell, with concurrence of his associates of the court, affirms the general right of expatriation in these words:

"Nature has given to all men the right of relinquishing the society in which birth or accident may have thrown them, and of seeking subsistence and happiness elsewhere; and it is believed that this right of emigration, or expatriation, is one of those inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity. But, although municipal laws cannot take away or destroy this great right, they may regulate the manner and prescribe the evidence of its exercise; and in the absence of these regulations, *juris positivi*, the right must be exercised according to the principles of general law." (*Ibid.*, pp. 396, 397.)

The same judge suggests reasonable doubt of the effect of that provision of the law of Virginia which requires a formal declaration of the purpose of change of citizenship. "If," he says, "arguments drawn from the long and uniform practice of a country are ever allowed to have any influence on a question concerning the construction of its laws, they might here be urged with much force. For, of the innumerable emigrants from Virginia who have overspread the Southern and Western States and Territories, and filled their highest offices, it is believed that not one has ever deemed it necessary to conform to our act concerning expatriation. Are they still citizens of the State?" (*Ibid.*, p. 399.)

And he adds expression of opinion that, "if a citizen of Virginia shall have departed out of this commonwealth with an open and avowed, fair and *bona fide*, intention of quitting it, and of becoming a citizen of some other State, and shall, in fact, have become a citizen thereof, that, from thenceforth, he ceased to be a citizen of Virginia, notwithstanding he may have omitted to comply with the requisites of our expatriation act." (*Ibid.*, p. 400.)

Judge Roane, another member of the court, dwells on the important fact of the difference between citizenship of a State and that of the United States; the consideration of which leads him to say, among other things:

"I entirely subscribe to the doctrine that the situation of America, in this particular, is new and may produce new and delicate questions; that we have sovereignties moving within sovereignties; that allegiance to a particular State is one thing, and that to the United States is another; that a renunciation of the former allegiance does not draw after it a renunciation of the latter; and that a statute of the United States on the subject of expatriation is much wanted." (*Ibid.*, 403.)

And the same distinction draws after it the following reflection:

"The power of expatriation, in relation to the commonwealth of Virginia, is one with which Congress had certainly nothing to do; it is not granted in the instrument of government; and it is a fundamental principle in our system that each State retains every power, jurisdiction, and right, which is not delegated to the United States by the Constitution, nor prohibited by it to the States. The power of legisla-

tion on the subject of expatriation from the commonwealth of Virginia has not and ought not to have been given up by Virginia to the United States." (*Ibid.*, p. 405.)

As to which it may be observed that, undoubtedly, the State of Virginia may determine who is a citizen of that State, in relation to any matter of the proper jurisdiction of the State, but not in matters of the jurisdiction of the United States. The question of citizenship, for instance, as affecting the right to hold lands in the State, the State itself may decide, without interference on the part of the United States. Not so in regard to Federal citizenship.

Indeed, in one great class of cases, that of suits in the courts of the United States by the citizens of one State against the citizens of another, as provided for by the Constitution, it has been adjudged that mere simple removal to one State from another, and residence in the former, constitutes a change of citizenship in that respect within the meaning of the Constitution and the acts of Congress. (Cooper *v.* Gilbraith, 3 Washington's C.C. R., p. 546; Case *v.* Clark, 5 Mason's R., p. 70.) The party must of course be otherwise a citizen of the United States. (Gassies *v.* Ballon, 6 Peters, 761.)

Finally, the members of the court affirm, with one accord, that, conceding the right of expatriation, however regulated, its effective exercise depends on the completeness, publicity, and good faith of the assumed act of expatriation.

Views to the same effect, in substance, appear to have been entertained by the courts of the State of Kentucky. In one case, to be sure, the court merely refer to this matter as a "litigated question," and refuse to pass upon it without necessity. (Brooks *v.* Clay, 3 A. K. Marshall's R., p. 545. See S. C., Shearer *v.* Clay, 1 Littell's R., p. 261.) But, in a later case, the court of appeals of that State, by Chief Justice Robertson, met the great question directly, and placed it on what are, in my judgment, its true foundations.

In the first place, the court construe the law of Virginia reasonably, suggesting that the mode of expatriation prescribed by that law is very proper, but "is not, of course, the only admissible or satisfactory evidence of the fact that the admitted right has been exercised."

In the second place, the court say:

"Whatever may be the speculative or practical doctrine of feudal governments or ages, *allegiance*, in these United States, whether local or national, is, in our judgment, altogether conventional, and may be repudiated by the native as well as adopted citizens, with the presumed concurrence of the Government, without its formal or express sanction. Expatriation may be considered a practical and fundamental doctrine of America. American history, American institutions, and American legislation, all recognize it. It has grown with our growth, and strengthened with our strength. The political obligations of the citizen, and the interests of the republic, may forbid a renunciation of allegiance by his mere volition or declaration, at any time, and under all circumstances. And, therefore, the Government, for the purpose of preventing abuse and securing the public welfare, may regulate the mode of expatriation. But when it has not prescribed any limitation on the right, and the citizen has in good faith abjured his country, and become a subject or citizen of a foreign nation, he should, as to his native government, be considered as denationalized, especially so far as his civil rights may be involved, and at least, so long as that government shall seem to acquiesce in his renunciation of his political rights and obligations." (Alsberry *v.* Hawkins, 9 Dana's R., p. 177.)

These are intelligent views: expatriation a general right, subject to regulation of time and circumstance according to public interests; and the requisite consent of the State presumed where not negatived by standing prohibitions.

In conclusion of this part of the subject, it seems proper to add, that the juridical authorities of the United States admit that a party may by his own act be subject to the conflicting obligations of two different allegiances. (United States *v.* Williams, 2 Cranch, p. 82, note; Ainslie *v.* Martin, 9 Massachusetts R., p. 453; Sergeant's Constitutional Law, p. 319.)

A meritorious writer on constitutional law (Mr. Rawle) has devoted some pages to the discussion of the question. He maintains, with reason, that no such thing as absolute or indefeasible right of expatriation exists, any more than absolute or indefeasible right of allegiance; and suggests consideration of the distinction between mere emigration, involving question of domicile only, and expatriation, involving of necessity change of allegiance. (Rawle on the Constitution, ch. 9. See also Duer's Lectures, p. 302.)

Another legal commentator has been disposed to affirm, with more absoluteness, the right of expatriation, and with perhaps insufficient regard for the contingent rights of the State. (Tucker's Blackstone, vol. ii, pt. 2, p. 90.)

There is a small but well-written treatise on the question by Mr. Hay, elicited by the circumstances in which the second war between the United States and Great Britain originated, and which involved, among other things, extravagant assertions of the doctrine of indefeasible allegiance, as against British emigrants to the United States.

In truth, opinion in the United States has been at all times a little colored on the

subject by necessary opposition to the assumption of Great Britain to uphold the doctrine of indefeasible allegiance, and in terms to prohibit expatriation. Hence we have been prone to regard it hastily as a question between kings and their subjects. It is not so. The true question is of the relation between the political society and its members, upon whatever hypothesis of right, and in whatever form of organization, that society may be constituted.

The assumption of a natural right of emigration, without possible restriction in law, can be defended only by maintaining that each individual has all possible rights against society, and the society none with respect to the individual; that there is no social organization, but a mere anarchy of elements, each wholly independent of the other, and no otherwise consociated save than by their casual co-existence in the same territory. (Ahrens, Droit Natural, p. 324.)

Accordingly through all the diversities of opinion respecting the question, the true doctrine of our law is readily distinguishable, as it appears to me, and is not in contradiction with jurisprudence, theoretical or positive, of the enlightened nations of Europe.

If we cursorily inspect the existing laws of different countries, we discern in them three aspects of the main question.

In Great Britain the professed theory and the actual law combine to prohibit expatriation in terms. (Act of 3 James I, cap. 4.) In practice, however, emigration is permitted, nay encouraged. And, on the other hand, the most striking negation of the indefeasibility of allegiance as a principle is afforded by the act of Parliament of 7 and 8 Victoria, cap. 66, which makes permanent a general provision for the naturalization of aliens in Great Britain. (See Bowyer's Const. Law of England, p. 406.) Thus it is that the jurisprudence of England, little capable of generalization, asserts an assumed rule of public law, or denies it, according to the caprices of apparent local interest; and her diplomacy, with characteristic inconsequence and partiality of thought, upholds abroad, while it repudiates at home, the saying of the great republican jurisconsult, *civitas carcer non est.* (Bynkershoek, Quæst. J. Pub., lib. i., cap. 22.)

The singularity of the law of England consists in the doctrine, that, as explained by Sir William Blackstone, a natural subject cannot by any possibility or for any reason cease to be a subject, save by the permission of his liege lord. (Blackstone's Com., vol. i, p. 369.) And this, adds Blackstone, is a "principle of universal law;" in support of which strange assertion he cites, not any of the great authorities of universal or public law—all of whom, as we shall presently see, maintain the contrary—but a common lawyer of his own country, namely, Sir Matthew Hale. (Pleas of the Crown, vol. i, p. 68.) And a very modern commentator on the laws of England (Mr. Anstey) adheres to the doctrine, applying to every Englishman who leaves the country the phrase of *amittit regnum sed non regem.* (Lectures on the Laws of England, p. 94.)

In other countries, the party emigrating contrary to law may lose the civil rights of his birthplace, and become liable to forfeitures of a local description, but without drawing upon himself the extreme consequences involved in the doctrine of the laws of England.

Thus, the Code Napoléon provides that "The quality of Frenchmen will be lost: 1, by naturalization acquired in a foreign country; 2, by the acceptance, without authority of the government, of public functions conferred by a foreign government; 3, by establishment in a foreign country without purpose of return." (Art. 17.) It also provides the means of recovering the lost quality, except in the case of the party bearing arms against his country. (Arts. 18, 20, 21.) There are several decrees, one of the reign of Louis XIV, and two of that of Napoleon I, which add confiscations and loss of civil rights, as the penalty of any Frenchman expatriating himself without public authority. But some doubt exists whether these decrees are now in force, and at any rate they are not so as respects the provision of confiscation; the doctrine of the general right of expatriation being maintained in France. (Dalloz, Dic. Jur. voc. Droit Civil, 53.)

Spain and the Spanish American Republics contemplate and provide for voluntary expatriation. (Escriche, Dic. sub. voce. Espanol, Natural.)

It is a curious fact that, at the time when Bynckershoek wrote, the governments which prohibited expatriation under penalties were Great Britain, Russia, France, and China. (Qæst. Juris. Publ., lib. i., cap. 22.)

Then, as now, expatriation was lawful in Spain, as it now is in the Spanish American Republics. (Escriche, ubi. supra.) And the public policy of Spain has never been otherwise in this relation. (Don, Derecho Publico, lib. i, tit. 7.)

But the most explicit and complete enactments on the subject are those of some of the States of the Germanic Confederation. I take as example the legislation of Austria and Prussia.

In each of these countries emigration is permitted by law, but regulated. In neither of them can expatriation take place legally in evasion of military duty. In both special conditions apply to the time of war. In Prussia permission to emigrate is not refused unless for prescribed causes, appertaining to military or civil obligations; in

Austria it may be refused at discretion. In Prussia ten years' residence in a foreign country, with some exceptions, effects the result of expatriation; this provision is omitted in Austria. Of each system, the common and essential feature is a standing provision for emigration on application to the public authorities. (Decree of the Emperor Francis I, of March 24, 1832; Circular of King Frederick William, of December 31, 1842.)

In the United States, as we have seen, there is no provision of federal law which defines citizenship; and none which expressly forbids or expressly authorizes the expatriation of citizens of the United States.

On several occasions, when the question was before Congress, doubts were suggested whether the Federal Government has power to legislate on the subject. I cannot perceive the force of these doubts. Citizenship is a federal qualification for the tenure of office, and for the enjoyment of many other rights under the Constitution of the Union. What constitutes citizenship of the United States cannot be determined by the several States. If they were to undertake it, they would be found to differ radically and irreconcilably in the matter. If Congress cannot do it, then the Union is in the singular predicament of the constitutional impossibility of ascertaining who compose it, who may be its President, Senators, and Representatives. No such impossibility exists. When Congress enacts that only citizens of the United States are competent to do certain things, it may well proceed to say, if it choose, who the persons thus designated are, and to define them by classes or description of inclusion or exclusion. If it could not say this directly, and by systematic definition, in the way other nations do, it could say it indirectly by acts of penalty; it could say what are the circumstances of time or manner in which the act of emigration would or would not deprive an American of rights, or subject him to penalties and forfeitures. But the idea that citizenship, or the loss of it, cannot be defined by Congress, is one of the lingering prejudices of the common law, which relies upon judicial exposition to deduce general rules from particular cases, instead of laying down general rules by previous legislative survey of the subject-matter. Thus it is that Congress leaves this question to the fortuitous occurrence of some judicial contingency, in which it may be definitely disposed of by decision of the Supreme Court.

In the absence of such a decision, we are compelled to reason out a conclusion in the premises, with aid of analogies of our own or of the public law applicable thereto.

The doctrine of absolute and perpetual allegiance—the root of the denial of any right of emigration—is inadmissible in the United States. It was a matter involved in, and settled for us by, the Revolution, which founded the American Union.

Moreover, the right of expatriation, under fit circumstances of time and of manner, being expressly asserted in the legislation of several of the States, and confirmed by decisions of their courts, must be considered as thus made a part of the fundamental public law of the United States.

Most of the jurisconsults and judges who have had occasion to discuss the subject admit, as we see, either directly or indirectly, that it is a question of circumstances and conditions.

The admissibility of change of allegiance in the United States without necessary *express* co-operation of the foreign government, is implied by the naturalization acts, which require conditions of residence, of personal character, of publicity, and of actual abjuration of the foreign allegiance, as indispensable to the consummation of an act of expatriation.

I think, in consideration of these premises, that the omission of the federal laws to enact any express or specific restraints on expatriation is tacit or implied consent, subject only to such conditions of good faith, of discharge of subsisting obligations to the society left, and of consummated expatriation in fact, as the principles of international right require to observed.

As a question of natural right, emigration belongs to the general category of those elements of individual happiness which every citizen is entitled to pursue, but in subordination, always, to the general welfare. (Grotius, De Jure Bell, ac Pacis, lib. ii, ch. 5, No. 24; Wolff, Jus Naturæ, part vii, cap. i. s. 186, 187; Burlamaqui, Droit de la Nature, p. 2, ch. 5, s. 13; Almeda, Derecho Publico, tom. i, cap. 17.)

The society cannot absolutely take away this right, but may regulate it in such way as to reconcile the interest of the individual and of the community. (Wolff, Jus Naturæ, pars viii, cap. 3, s. 415; Vattel, Droit des Gens, liv. i, ch. 19, s. 10.)

In fine, the present state of the law of nations and of nature on this point is well stated by D. Antonio Riquelme, as follows:

"It is a recognized principle of the law of nations that all can change their primitive nationality, according to their convenience. This principle, admitted by all the world, and in virtue of which every individual may renounce the nationality which birth combined with parentage gives him, does not release him who avails himself of it of the obligations which he owes to his country; so that the citizen or subject who, without authorization of his government, accepts the nationality of a foreign state, may be called upon for the performance of the personal charges imposed upon

him by his primitive country in the form which the laws establish. Thus, a deserter from the military service, who becomes naturalized in the state to which he flies, though not subject to extradition without special treaty authorizing it, if, nevertheless, he come within the jurisdiction of the authorities of his primitive country, cannot be reclaimed by his new one, but remains bound to fulfill the obligations of his service. While the law of nations concedes to individuals the liberty of changing their nationality, it also empowers a state to restrict this faculty in certain circumstances, as in case of war and others, in return for the services and protection which it bestows on the citizen or subject; and when he changes his nationality in contempt of the laws, he gives occasion for the disregard of his new nationality." (Derecho Internacional, tom. i, p. 319.)

In the absence of general prohibition, general consent of the state is presumed. "Vel si consenu expresso *aut tacito*." (Puffendorf, De Officio Hominis et Civis, lib. ii, cap. 18.) Or, in the words of Bynkershoek, "Si non sit lex quæ prohibeat, utique licet subditi conditionem exuere, et civitatem ut lubet mutare." (Quæstiones Juris Publici, lib. i, cap. 22.)

Of course, the citizen cannot apply such implied consent to any act of pretended emigration, which is itself a violation otherwise of the law, either public or municipal, as in the case of illegal military enterprises; nor, by it, can he escape the punishment of crime or the performance of local contracts, nor appeal to it as a mask to cover desertion or treasonable aid of the public enemy. I am not prepared to say that the right of a citizen of the United States to expatriate himself, implied in the absence of any prohibition, may not be exercised in time of war; but, if so, it would have to be done with attendant circumstances, clearly showing good faith, in order to be justifiable; and it is not easy to see how citizenship could be transferred in time of war to the foreign enemy in such way as to escape reprehension, if the party should afterward return to the United States.

And, whether in peace and war, the expatriation would have to be an actual one, by foreign residence, and with authentic renunciation of the pre-existing citizenship. Under the circumstances and with the conditions thus indicated, and subject to such others as the public interest might seem to Congress to require to be imposed, it seems to me that the right of expatriation exists, and may be freely exercised by the citizens of the United States.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. WILLIAM L. MARCY,
Secretary of State.

(B.)

UNITED STATES NATURALIZATION ACT, 1802.

[N. B.—*This law has been already printed.*]

(C.)

"ANN," SMITH.

This ship, under American colors, was seized in the river Thames, by the marshal of the admiralty, on the 1st of August, 1812. A claim was given by the master, who was also sole owner of the ship, describing himself to be a British subject, and as such entitled to the benefit of the order in council of November, 1812, directing the restitution of British ships under the American flag. It appeared that he was a native of Scotland, and that his wife and family resided in that country, but that he had himself been admitted a citizen of America about sixteen years ago, upon taking an oath that he had been sailing out of the American port for two years; that from the year 1799 till 1805 he had been connected with a house of trade at Glasgow, which had an establishment at New York, and another at Charlestown, and that he had occasionally resided at each of the last-mentioned places; that he had purchased this vessel at public auction in America, and had made three voyages in her, the two first from Charlestown to Kingston, in Jamaica, returning each time in ballast, and the last from Charlestown to the river Thames. The question was, whether, from the residence and employment of this man, he was, *quoad* this vessel, to be considered as a British subject.

Sir W. SCOTT. This ship, when seized by the marshal in the river Thames, was under the American flag, but, according to the account given by the master, was not furnished with the American, or indeed with any pass whatever. It is very difficult to conceive that this was the true state of the case, since the ship was not only American-built but likewise American-owned, as far, at least, as the ostensible character of the claimant is concerned; for though he could not altogether throw off his allegiance to his native country, he had been admitted a citizen of the United States. I cannot conceive, therefore, why the pass was not granted, or what obstacle prevented this man from obtaining so important a document. I must presume that the vessel was furnished with an American pass; but, supposing the case to be otherwise, still, if the ship was furnished with the documents usually granted to American ships, the same rule of law must be applied as if she had been furnished with a regular flag and pass. The ship must be conclusively held to be American property, and consequently subject to condemnation.

It is said, however, that this ship is protected by the order in council issued on the 28th of November, 1812, by which it is directed "that all vessels under the flag of the United States of America which are *bona fide* and wholly the property of His Majesty's subjects, and not purchased by them subsequent to the date of hostilities on the part of the United States of America, and which shall have been detained in port under the embargo, or shall have sailed to or from the ports of this kingdom previous to the knowledge of hostilities, and shall have been captured on such voyage, shall be restored to the British owners, upon satisfactory proof being made to the high court of admiralty or the courts of vice-admiralty, to which they shall be taken for adjudication, that the said vessels are *bona fide* and wholly the property of His Majesty's subjects as aforesaid, and had been engaged in trade as above described." A claim has been given for this ship by Mr. Smith, describing himself to be a British subject; and, if he is a British subject, he will, under this order in council, be entitled to restitution.

The question, therefore, comes to this, whether the claimant is, *quoad* this property, to be considered a British subject. For some purposes he is undoubtedly so to be considered. He is born in this country, and is subject to all the obligations imposed upon him by his nativity. He cannot shake off his allegiance to his native country, or divest himself altogether of his British character by a voluntary transfer of himself to another country. For the mere purposes of trade he may, indeed, transfer himself to another state, and may acquire a new national character. An English subject, resident in a neutral state, is at liberty to trade with the enemy of this country in all articles, with the exception of those which are of a contraband nature; but a trade in such articles would be contrary to his allegiance. Now, the account which he gives of himself is, "that he was born at Falkirk, in Scotland; that during the last seven years he has been chiefly at sea, but, when at home, he has lived, and still lives, at Bathgate, in the shire of Linlithgow, in North Britain; that he is the subject of our sovereign lord the King, but about sixteen years ago he was admitted a citizen of the United States of America, for the purpose of commerce only." Why, this transaction is for the purpose of commerce. According to his own account, then, he ceased to be a British subject for commercial purposes. He goes on to say, that he was admitted "for the purpose of covering a ship of his own, to enable her to sail without risk of capture, and he was so admitted by the magistrates of Philadelphia, on oath being made that he had sailed out of an American port for two years; that he hath never been admitted a burgher or freeman of any city or town, but, from the year 1799 to the year 1805, the deponent having been connected in a house of trade at Glasgow, which had a house at New York, and another at Charlestown in South Carolina," so that, from the year 1799 to the year 1805, he might, as far as he was connected with the house at Glasgow, and for that particular branch of his trade, be considered a British subject. But since that time I understand him to say that he has withdrawn altogether from that connection. He says afterward, in answer to the ninth interrogatory, "that he is a North Briton by birth, and when he is at home his place of residence is Bathgate, in the shire of Linlithgow, in North Britain, where his wife and family reside, and where he the deponent hath always resided from the time he was ten or eleven years of age, when he was not at sea or in foreign parts." The affirmative part of his history, as far as it goes, shows that he lived very much abroad, and principally at New York or Charlestown, in America. True it is that he had no house in either of these places, but he was there as a single man. It is not the mere circumstance of leaving a wife and family in Scotland that will avail him for the purpose of retaining the benefit of his national character. He cannot be permitted to take the advantage of both characters at the same time, and in the same adventure. The utmost that can be allowed to him is, that he should be entitled to the one character or the other, according to the circumstances of the transaction. When the vessel herself is American-built, when the personal residence of the owner, as far as he has any, is in America, (for it does not appear that this man at all resided in Scotland,) it would be difficult to say that it could

be any other than an American transaction. Since the purchase of this ship by Mr. Smith, he has made three voyages: two of them to Kingston in Jamaica, and one to the port of London; but to the ports of Scotland he has never sailed, nor does it appear that he has even visited his wife and family in that country. He has been sailing constantly out of American ports, and his prevailing destination has been to the West India Islands. It is quite impossible that he can be protected under the order in council, which applies only to those who are clearly and habitually British subjects, having no intermixture of foreign commercial character. It never could be the intention of His Majesty's government that the benefit of this order should be extended to a person who has thrown off his allegiance, and estranged himself from his British character, as far as his own volition and act could do. I am of opinion that Mr. Smith is not entitled to the benefit of the order in council, and therefore I reject the claim. Ship condemned.

(D.)

Extrait des minutes du greffe du tribunal civil de première instance de l'arrondissement de Wissembourg, département du Bas-Rhin.

Le tribunal civil de première instance de l'arrondissement de Wissembourg à rendu le jugement suivant:

Audience du vingt-cinq avril, mil huit cent soixante:

Entre Michel Zeiter, cultivateur, domicilié aux États-Unis de l'Amérique, demandeur, comparant par Maître Volpert, son avoué;

Contre M. le préfet du Bas-Rhin, défendeur.

Après avoir ouï à l'audience du vingt courant, les conclusions de M. de Riug, substitut du procureur impérial, et après en avoir délibéré en la chambre du conseil:

Attendu que les tribunaux sont compétents d'après l'article vingt-six de la loi du vingt-un mars, mil huit cent trente-deux, pour décider les questions relatives à l'état ou aux droits civils des jeunes gens appelés à faire partie du contingent de l'armée; atteudu que, d'après l'article deux de la même loi, nul ne peut être admis dans les troupes françaises s'il n'est français:

Que le demandeur prétendant qu'il a perdu sa qualité de Français par sa naturalisation en pays étranger, il n'y a pas à s'inquiéter si cette naturalisation en pays étranger a eu lieu sans l'autorisation du gouvernement français, contrairement aux prescriptions du decret du viugt-six août, mil huit cent onze, mais seulement si, au moment actuel, le demandeur est encore Français.

Attendu que le demandeur rapporte un certificat constatant qu'il s'est présenté devaut la cour des plaids communs du comté d'Essex, état de New Jersey, et a fait la demande d'être admis à devenir citoyen des États-Unis d'Amérique, mais qu'il n'est pas justifié que cette formalité suffise pour conférer cette qualité; que le tribunal doit exiger un supplément de renseignements, tel, par exemple, qu'une attestation du consul des États-Unis en France de reconnaissance du titre de citoyen des États-Unis d'Amérique.

Par ces motifs, le tribunal surseoit à statuer sur la demande jusqu'à ce que le demandeur rapporte une attestation du consul des États-Unis en France, constatant qu'il a rempli toutes les formalités nécessaires pour devenir citoyen des États-Unis, ou toute autre pièce justificative de sa nouvelle nationalité et le condamne dès à présent aux dépens.

Jugé et prouoncé à l'audience publique du tribunal civil de l'arrondissement de Wissembourg: présents, Messieurs Bardy, president; Lanth et Stoffel, juges; et Richert, procureur impérial.

N. BARDY, ET
VOGT,
Commis Greffier.

Extrait des minutes du greffe du tribunal civil de première instance de l'arrondissement de Wissembourg, Bas-Rhin.

Le tribunal civil de première instance de l'arrondissement de Wissembourg a rendu le jugement suivant:

Audience du deux juin, mil huit-cent soixante:

Entre Michel Zeiter, cultivateur, domicilié aux États-Unis d'Amérique, demandeur, comparant par Maître Volpert, avoue;

Contre M. le préfet du Bas-Rhin, défendeur, représenté par M. le procureur impérial.

Après avoir ouï les conclusions respectives des parties, ainsi que celles du ministère public:

Attendu que, par la production du certificat qui lui a été delivré le vingt-huit mai dernier, par le consul des États-Unis à Paris, et qui a été enregistré à Wissembourg aujourd'hui, le demandeur a justifié qu'il est citoyen américain:

Le tribunal donne acte au demandeur de ce que, par la production du dit certificat, il a satisfait au jugement rendu en ce siège le vingt-cinq avril dernier.

En conséquence dit et reconnait que le demandeur, Michel Zeiter, par sa naturalisation en pays étranger, a perdu la qualité de Français, et le condamne aux dépens.

Jugé et prononcé à l'audience publique du tribunal civil de l'arrondissement de Wissembourg: presents, Messieurs Bardy, président; Lanth et Stoffel, juges; et De Ring, substitut du procureur impérial.

N. BARDY, ET
VOGT,
Commis Greffier.

NOTE.—M. Treitt, who has procured the copy of this paper, states that the judgment attracted little attention at the time it was given, and that it must not be accepted as a definitive exposition of French law on a point which, as he believes, is still open to controversy.

(E.)

Extracts of an opinion of Mr. Attorney-General Bates, dated November 29, 1862.

Who is a citizen? What constitutes a citizen of the United States? I have often been pained by the fruitless search in our law books and the records of our courts for a clear and satisfactory definition of the phrase *citizen of the United States.* I find no such definition, no authoritative establishment of the meaning of the phrase, neither by a course of judicial decision in our courts, nor by the continued and consentaneous action of the different branches of our political government. For aught I see to the contrary, the subject is now as little understood in its details and elements, and the question as open to argument and to speculative criticism, as it was at the beginning of the Government. Eighty years of practical enjoyment of citizenship, under the Constitution, have not sufficed to teach us either the exact meaning of the word, or the constituent elements of the thing we prize so highly.

In most instances, within my knowledge, in which the matter of citizenship has been discussed, the argument has not turned upon the existence and the intrinsic qualities of citizenship itself, but upon the claim of some right or privilege as belonging to and inhering in the character of a citizen. In this way we are easily led into errors both in fact and principle. We see individuals, who are known to be citizens, in the actual enjoyment of certain rights and privileges, and in the actual exercise of certain powers, social and political, and we, inconsiderately, and without any regard to legal and logical consequences, attribute to those individuals, and to all of their class, the enjoyment of those rights and privileges, and the exercise of those powers, as incidents to their citizenship, and belonging to them only in their quality of citizens.

In such cases it often happens that the rights enjoyed and the powers exercised have no relation whatever to the quality of citizen, and might be as perfectly enjoyed and exercised by known aliens. For instance, General Bernard, a distinguished soldier and devoted citizen of France, for a long time filled the office of general of engineers in the service of the United States, all the time avowing his French allegiance, and, in fact, closing his relations with the United States by resigning his commission and returning to the service of his own native country. This and all such instances (and they are many) go to prove that in this country the legal capacity to hold office is not confined to citizens, and therefore that the fact of holding any office for which citizenship is not specially prescribed by law as a qualification is no proof that the incumbent is an American citizen.

Again, with regard to the right of suffrage, that is, the right to choose officers of government, there is a very common error, to the effect that the right to vote for public officers is one of the constituent elements of American citizenship, the leading faculty indeed of the citizen, the test at once of this legal right and the sufficient proof of his membership of the body-politic. No error can be greater than this, and few more injurious to the right understanding of our constitutions, and the actual working of our political government. It is not only not true in law or in fact, in principle or in practice, but the reverse is conspicuously true; for I make bold to affirm that, viewing the nation as a whole, or viewing the States separately, there is no district in the nation in which a majority of the known and recognized citizens are not excluded by law from the right of suffrage. Besides those who are excluded specially on account of some personal defect, such as paupers, idiots, lunatics, and men convicted of infamous crimes, and, in some States, soldiers, all females, and all minor males are also excluded. And

these, in every community, make the majority; and yet, I think, no one will venture to deny that women and children, and lunatics, and even convict felons, may be citizens of the United States.

Our code (unlike the codes of France, and perhaps some other nations) makes no provision for loss or legal deprivation of citizenship. Once a citizen, whether *natus* or *datus*, (as Sir Edward Coke expresses it,) always a citizen, unless changed by the volition and act of the individual. Neither infancy nor madness nor crime can take away from the subject the quality of citizen. And our laws do, in express terms, declare women and children to be citizens. See, for one instance, the act of Congress of February 10, 1855, 10 Stat., 604.

The Constitution of the United States does not declare who are and who are not citizens, nor does it attempt to describe the constituent elements of citizenship. It leaves that quality where it found it, resting upon the fact of home, birth, and upon the laws of the several States. Even in the important matter of electing members of Congress it does no more than provide that "the House of Representatives shall be composed of members chosen every second year *by the people* of the several States, and the *electors* in the several States shall have the qualifications requisite for the electors of the most numerous branch of the State legislature." Here the word *citizen* is not mentioned, and it is a legal fact, known of course to all lawyers and publicists, that the constitutions of several of the States, in specifying the qualifications of electors, do altogether omit and exclude the words *citizen* and *citizenship*. will refer, in proof, to but three instances.

1. The constitution of Massachusetts, adopted in 1779–'80, in article 4 of section 3, cap 1, provides as follows: "Every *male person*, being twenty-one years of age, and *resident* of a particular town in this Commonwealth for the space of one year next preceding, having a freehold estate within the same town of the annual income of three pounds, or any estate of the value of sixty pounds, shall have the right to vote in the choice of representative or representatives for said town."

2. The constitution of North Carolina, adopted in 1776, after a bill of rights, and after reciting that "whereas allegiance and protection are, in their nature, reciprocal, and the one should of right be refused where the other is withdrawn," declares, in section 8, that all *freemen* at the age of twenty-one years, who have been *inhabitants* of any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the house of commons for the county in which he resides."

3. The constitution of Illinois, adopted in 1818, in article 2, section 27, declares that "in all elections all *white male inhabitants* above the age of twenty-one years, having resided in the State six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election."

These three constitutions belong to States widely separated in geographical position, varying greatly from each other in habits, manners, and pursuits, having different climates, soils, productions, and domestic institutions, and yet not one of the three has made *citizenship* a necessary qualification for a voter; all three of them exclude all females, but only one of them (Illinois) has excluded the black man from the right of suffrage. And it is historically true that the practice has conformed to the theory of those constitutions respectively; for, without regard to citizenship, the colored man has not voted in Illinois, and freemen of all colors have voted in North Carolina and Massachusetts.

From all this it is manifest that American citizenship does not necessarily depend upon nor co-exist with the legal capacity to hold office, and the right of suffrage, either or both of them. The Constitution of the United States, as I have said, does not define citizenship; neither does it declare who may vote, nor who may hold office, except in regard to a few of the highest national functionaries. And the several States, as far as I know, in exercising that power act independently, and without any controlling authority over them, and hence it follows that there is no limit to their power in that particular but their own prudence and discretion; and therefore we are not surprised to find these faculties of voting and holding office are not uniform in the different States, but are made to depend upon a variety of facts, purely discretionary, such as age, sex, race, color, property, residence in a particular place, and length of residence there.

On this point, then, I conclude that no person in the United States did ever exercise the right of suffrage in virtue of the naked, unassisted fact of citizenship. In every instance the right depends upon some additional fact and cumulative qualification, which may as perfectly exist without as with citizenship.

I am aware that some of our most learned lawyers and able writers have allowed themselves to speak upon this subject in loose and indeterminate language. They speak "of all the rights, privileges, and immunities guaranteed by the Constitution to the citizen," without telling us what they are. They speak of a man's citizenship as defective and imperfect, because he is supposed not to have "all the civil rights," (all the *jura civitatis*, as expressed by one of my predecessors,) without telling what particu-

lar rights they are, nor what relation they have, if any, with citizenship. And they suggest, without affirming, that there may be different grades of citizenship, of higher and lower degree in point of legal virtue and efficacy; one grade "in the sense of the Constitution," and another inferior grade made by a State, and not recognized by the Constitution.

In my opinion the Constitution uses the word "citizen" only to express the political quality of the individual in his relations to the nation; to declare that he is a member of the body-politic, and bound to it by the reciprocal obligation of allegiance on the one side and protection on the other. And I have no knowledge of any other kind of political citizenship, higer or lower, statal or national; or of any other sense in which the word has been used in the Constitution, or can be used properly in the laws of the United States. The phrase "a citizen of the United States," without addition or qualification, means neither more nor less than a member of the nation. And all such are, politically and legally, equal. The child in the cradle and its father in the Senate are equally citizens of the United States. And it needs no argument to prove that every citizen of a State is, necessarily, a citizen of the United States; and to me it is equally clear that every citizen of the United States is a citizen of the particular State in which he is domiciled.

And as to voting and holding office, as that privilege is not essential to citizenship, so the deprivation of it by law is not a deprivation of citizenship. No more so in the case of a negro than in case of a white woman or child.

In common speech the word "citizen," with more or less of truth and pertinency, has a variety of meanings. Sometimes it is used in contrast with *soldier;* sometimes with *farmer* or *countryman;* sometimes with *alien* or *foreigner.* Speaking of a particular man, we ask, Is he a citizen or a soldier? meaning, Is he engaged in civil or military pursuits? Is he a citizen or a countryman? meaning, Does he live in the city or in the country? Is he a citizen or an alien? meaning, Is he a member of our body-politic or some other nation? The first two predicates relate only to the pursuits and to the place of abode of the person. The last is always and wholly political, and concerns only the political and governmental relations of the individual. And it is only in this last sense, the political, that the word is ever used in the Constitution and statutes of the United States.

We have *natural-born* citizens, (Constitution, article 2, § 5,) not made by law or otherwise, but *born.* And this class is the large majority—in fact, the mass of our citizens—for all others are exceptions specially provided for by law. As they become citizens in the natural way, *by birth,* so they remain citizens during their natural lives, unless, by their own voluntary act, they expatriate themselves and become citizens or subjects of another nation. For we have no law (as the French have) to *decitizenise* a citizen who has become such either by the natural process of birth or by the legal process of adoption. And in this connection the Constitution says not one word, and furnishes not one hint, in relation to the color or to the ancestral race of the "natural-born citizen." Whatever may have been said in the opinions of judges and lawyers, and in State statutes, about negroes, mulattoes, and persons of color, the Constitution is wholly silent upon that subject. The Constitution itself does not *make* the citizens; (it is, in fact, made by them.) It only intends and recognizes such of them as are natural—home-born—and provides for the *naturalization* of such of them as were alien—foreign-born—making the latter, as far as nature will allow, like the former.

And I am not aware of any provision in our laws to warrant us in presuming the existence in this country of a class of persons intermediate between citizens and aliens. In England there is such a class, clearly defined by law, and called *denizens.* "A denizen," says Sir William Blackstone, "is an *alien born,* but who has obtained, *ex donatione regis,* letters-patent to make him an English subject; a high and incommunicable branch of the *royal prerogative.* A denizen is in a kind of middle state between an alien and a natural-born subject, and partakes of both of them."—(Sharwood's Com., 374.) In this country I know of but one legal authority tending to show the existence of such a class among us. One of my learned predecessors, Mr. Legaré, (4 Opin., 147,) supposes that there may be such a class, and that free colored persons may be ranked in it. Yet, in that same opinion, he declares that a "free man of color, a *native* of this country, may be admitted to the privileges of a pre-emptioner under the 10th section of the act of the 4th September, 1841." And that act declares that a pre-emptioner must be either a citizen of the United States or a person who had declared his intention to become a citizen, as required by the naturalization laws. Of course the "colored man" must have been a *citizen,* or he could not have entered the land under that act of Congress. If not a citizen *then* by virtue of his native birth, he never could become one by force of law, for our laws extend the privileges of naturalization to such persons only as are "*aliens,* being free *white* persons," and he was neither; not alien, because natural-born in the country; and not a free *white* person, because, though free, confessedly "a man of color."

As far as I know, Mr. Secretary, you and I have no better title to the citizenship which we enjoy than the "accident of birth"—the fact that we happened to be born in

the United States. And our Constitution, in speaking of *natural-born citizens*, uses no affirmative language to make them such, but only recognizes and reaffirms the universal principle, common to all nations and as old as political society, that the people born in a country do constitute the nation, and, as individuals, are *natural* members of the body-politic.

If this be a true principle—and I do not doubt it—it follows that every person born in the country is, at the moment of birth, *prima facie* a citizen; and he who would deny it must take upon himself the burden of proving some great disfranchisement strong enough to override the "*natural-born*" right as recognized by the Constitution in terms the most simple and comprehensive, and without any reference to race or color, or any other accidental circumstance.

That nativity furnishes the rule, both of duty and of right, as between the individual and the government, is a historical and political truth so old and so universally accepted that it is needless to prove it by authority. Nevertheless, for the satisfaction of those who may have doubts upon the subject, I note a few books, which, I think, cannot fail to remove all such doubts: Kent's Com., vol. 2, part 4, sec. 25; Bl. Com., book 1, ch. 10, p. 365; 7 Co. Rep., Calvin's case; 4 Term Rep., p. 300, Doe *v.* Jones; 3 Pet. Rep., p. 246, Shanks *v.* Dupont; and see a very learned treatise, attributed to Mr. Binney, in 2 Am. Law Reporter, 193.

In every civilized country the individual is born to duties and rights—the duty of allegiance and the right to protection; and these are correlative obligations, the one the price of the other, and they constitute the all-sufficient bond of union between the individual and his country, and the country he is born in is, *prima facie*, *his* country. In most countries the old law was broadly laid down that this natural connection between the individual and his native country was perpetual—at least that the tie was indissoluble by the act of the subject alone. (See Bl. Com. *supra;* 3 Pet. Rep.)

But that law of the perpetuity of allegiance is now changed, both in Europe and America—in some countries by silent acquiescence; in others by affirmative legislation. In England, while asserting the perpetuity of natural allegiance, the King, for centuries past, has exercised the power to grant letters of denization to foreigners, making them English subjects, and the Parliament has exercised at pleasure the power of naturalization.

In France the whole subject is regulated by written law, which plainly declares who are citizens, (*citoyens français,*) and who are only *the* French, (*Français,*) meaning the whole body of the French people. (See *Les Codes Français, titre premier.*) And the same law distinctly sets forth by what means citizenship and the quality of *French* may be lost and regained; and maintains fully the right of expatriation in the subject, and the power of naturalization in the nation to which he goes.

In the United States it is too late now to deny the political rights and obligations conferred and imposed by nativity; for our laws do not pretend to create or enact them, but do assume and recognize them as things known to all men, because pre-existent and natural, and therefore things of which the laws must take cognizance. Acting out this guiding thought, our Constitution does no more than grant to Congress (rather than to any other department) the power "to establish a *uniform rule* of naturalization." And our laws made in pursuance thereof indue the made citizen with all the rights and obligations of the natural citizen. And so strongly was Congress impressed with the great legal fact that the child takes its political status in the nation where it is born, that it was found necessary to pass a law to prevent the *alienage* of children of our known fellow-citizens who happen to be born in foreign countries. The act of February 10, 1855, (10 Statutes, 604,) provides that "persons," (not *white* persons,) "persons heretofore born, and hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers were, or shall be at the time of their birth, citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States: *Provided, however,* That the rights of citizenship shall not descend to persons whose fathers never resided in the United States."

"SEC. 2. *And be it further enacted,* That any woman who might lawfully be naturalized under the existing laws, married or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."

But for that act, children of our citizens who happen to be born at London, Paris, or Rome, while their parents are there on a private visit of pleasure or business, might be brought to the native home of their parents, only to find that they themselves were aliens in their father's country, incapable of inheriting their father's land, and with no right to demand the protection of their father's Government.

That is the law of birth at the common law of England, clear and unqualified; and now, both in England and America, modified only by statutes made from time to time, to meet emergencies as they arise.

Every citizen of the United States is a competent member of the nation, with rights and duties, under the Constitution and laws of the United States, which cannot be destroyed or abridged by the laws of any particular State. The laws of the State if they conflict with the laws of the nation are of no force. The Constitution is plain beyond

cavil upon this point. Article 6: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties, &c., shall be the supreme law of the land, and the judges in *every State* shall be bound thereby, anything in the constitution or laws of *any State* to the contrary notwithstanding." And from this I assume that every person who is a citizen of the United States, whether by birth or naturalization, holds his great franchise by the laws of the United States, and above the control of any particular State. Citizenship of the United States is an integral thing, incapable of legal existence in fractional parts. Whoever, then, has that franchise is a whole citizen and a citizen of the whole nation, and cannot be (as the argument of my learned predecessor seems to suppose) such citizen in one State and not in another.

I fully concur in the statement that "the description, *citizen of the United States*, used in the Constitution, has the same meaning that it has in the several acts of Congress passed under the authority of the Constitution." And I freely declare my inability to conceive of any second or subordinate meaning of the phrase as used in all those instruments. It means in them all the simple expression of the political status of the person in connection with the nation—that he is a member of the body-politic. And that is all it means, for it does not specify his rights and duties as a citizen, nor in any way refer to such "rights, privileges, and immunities" as he may happen to have, by State laws or otherwise, over and beyond what legally and naturally belong to him in his quality of citizen of the United States. State laws may, and do—nay, must—vest in individuals great privileges, powers, and duties which do not belong to the mass of their fellow-citizens, and, in doing so, they consult discretion and convenience only. One citizen, who happens to be a judge, may, under proper circumstances, sentence another to be hanged, and a third, who happens to be governor, may grant a pardon to the condemned man, who, *as a citizen*, is the undoubted peer of both the judge and the governor.

The Constitution, I suppose, says what it means, and does not mean what it does not say. It says nothing about "the high characteristic privileges of a citizen of the State," (of Virginia, or any other.) I do not know what they were; but certainly in Virginia, for the first half of the existence of the commonwealth, the right of suffrage was not one of them. For during that period no man ever voted there *because* he was a free white adult male citizen. He voted on his freehold, in land; and no candidate, in soliciting his election, appealed to the people or to the citizens, but to the *freeholders* only, for they alone could vote.

(F.)

Chief Baron Pigott's refusal of a mixed jury in Warren's case.

The CHIEF BARON. My learned brother and I do not entertain the least doubt as to the course we ought to adopt in reference to this proceeding. It is essential to sustain the application; and, assuming the court has the power to grant it, the practice has been invariably to award a *jure de medietate*, as it is called, wherever an alien claims it. But assuming the authority of the court, upon which I will not now cast the slightest doubt, it is perfectly plain the person who claims a jury *de medietate linguæ* must *be* an alien. It is *very* truly put by the counsel for the prisoner that what the prisoner contends for in the present case is, that by reason of what appears—assuming the statement to be fact—what appears stated in the suggestion, he is an alien, and he is not now under the allegiance of the Queen. I cannot allow that proposition to be put forward without meeting it with a prompt and unhesitating denial. According to the law of England, a law which has been administered without any variation or doubt from the very earliest times, he who once is under the allegiance of the English sovereign remains so forever. It would be really almost pedantry for me to cite authorities on that subject. They are familiar to every lawyer. I shall cite one English authority, and I shall then cite some American authorities of the greatest weight and highest reputation. In the first volume of Blackstone's Commentaries, pages 269 and 270, the law is thus stated:

"Allegiance, both express and implied, is, however, distinguished by the law into two sorts or species, the one natural, the other local; the former being also perpetual, the latter temporary. Natural allegiance is such as is due from natural-born subjects. This is a tie which cannot be severed or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature. An Englishman who removes to France or to China owes the same allegiance to the King of England there as at home, and twenty years hence as well as now. For it is a principle of universal law that the natural-born subject of one prince cannot by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former, for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince to whom it was first due. Indeed, the natural-born subject of one prince, to whom he owes al-

legiance, may be entangled by subjecting himself absolutely to another, but it is his own act that brings him into these straits and difficulties of owing service to two masters; and it is unreasonable that, by such voluntary act of his own, he should be able at pleasure to unloose those bonds by which he is connected to his natural prince."

Blackstone then proceeds to show that local allegiance, which by foreigners is due to the monarch, continues so long as the foreigners reside within the kingdom. The maxim of the law on this subject, referred to by Sir Michael Foster, page 184 of his treatise, and referred to by a variety of other authorities, is *nemo potest exuere patriam.* I said I would only refer to one English authority. I have brought down, with a view to some possible matter which might have arisen, some American authorities; and I don't think it is unuseful to cite these authorities on the subject now before us. In Story's "Conflict of Laws," page 23, section 21, referring to the general maxim or rule that the laws of one State do not bind property or persons in another, he says:

"Upon this rule there is often engrafted an exception of some importance to be rightly understood. It is, that although the laws of a nation have no direct binding force or effect except upon persons within its own territories, yet that every nation has a right to bind its own subjects by its own laws in every other place. In one sense this exception may be admitted to be correct and well-founded in the practice of nations; in another sense it is incorrect, or at least it requires qualification. Every nation has hitherto assumed it as clear that it possesses the right to regulate and govern its own native-born subjects everywhere, and consequently that its laws extend to and bind such subjects at all times and in all places. This is commonly adduced as a consequence of what is called natural allegiance; that is, of allegiance to the government of the territory of a man's birth. Thus, Mr. Blackstone says, natural allegiance is such as is due from all men born within the King's dominions immediately upon their birth."

He then proceeds to quote the passage from Blackstone which I have cited. In Chancellor Kent's Commentaries, in the second volume, page 42, the following is laid down as English law. He is expounding the American law; and, expounding the American law, founded as it is on the law of England, he says—

"It is the doctrine of the English law, that natural-born subjects owe an allegiance which is intrinsic and perpetual, and which cannot be divested by any act of their own."

He then cites an English authority in the case of McDonnell, who was tried for high treason in 1746, by Lord Chief Justice Lee, and who, he says:

"Though born in England, had been educated in France, and spent his riper years there. His counsel spoke of the doctrine of natural allegiance as slavish and repugnant to the principles of their revolution. The court, however, said that it had never been doubted that a subject born, taking a commission from a foreign prince and committing high treason, was liable to be punished, as a subject, for that treason. They held that it was not in the power of any private subject to shake off his allegiance and transfer it to a foreign prince; nor was it in the power of any foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of allegiance between that subject and the Crown. Entering into foreign service without the consent of the sovereign, or refusing to leave such service when required by proclamation, is held to be a misdemeanor at common law."

Chancellor Kent then deals with the question, how far the English law prevails in America. He says:

"It has been a question [here he leaves the English law and proceeds to expound the other] frequently and gravely argued, both by theoretical writers and in frequent discussions, whether the English doctrine of perpetual allegiance applies in its full extent to this country."

That is, whether in America that doctrine is recognized. Its recognition there or repudiation could not in the slightest degree affect this country or its tribunals. Chancellor Kent then proceeds with an elaborate review of the authorities, and he closes thus, stating his view of the American law:

"From this historical review of the principal discussions in the Federal courts on this interesting subject of American jurisprudence, the better opinion would seem to be that a citizen cannot renounce his allegiance to the United States without the permission of Government, to be declared by law; and that, as there is no existing legislative regulation on the case, the rule of the English common law remains unaltered."

I have thought it right to cite these two great American authorities—Mr. Justice Story in his book on the Conflict of Laws, that is, on the laws of nations as they relate to each other, and Chancellor Kent expounding the law of America, and expounding it in the first instance by an exposition of the law of England, which is its foundation. We in our courts have been in the habit of treating, not merely with respect, but with reverence, these two great lights of the laws of America. We have cited them in our courts of justice; they have been quoted in our forensic discussions. The principles laid down by them in interpreting in America the laws of England as they are adopted there, have been approved and adopted by some of the ablest judges

that have sat on the British bench. Mr. Justice Story was himself a great judge. So was Chancellor Kent; and some of the finest contributions that have ever been made to the science of jurisprudence, or to the law of England as a science, have been made by these two great men from whose works I have read these passages. I have thought it not unuseful, since I had the opportunity of doing so, of stating that this was the law as laid down by the great authorities in America, because I think it is desirable that they who in America formed views—I will say no more now than that—with respect to what is passing, or what is expected to pass, within the dominions of the Crown of England, should be aware of the obligations imposed on them if they have ever been under the allegiance of the Crown of England; and how, according to the laws of England, they may be dealt with when they are found here. For these reasons we are of opinion that the objection made by the attorney-general is well founded, and that we ought not to comply with this application, and that the prisoner is not entitled to a jury *de medietate linguæ*.

(G.)

Memorandum on Prussian laws.

[Translation.]

By the terms of section 1 of the law of 3d September, 1814, (Collections of laws for the year 1814, p. 79,) every Prussian subject who has attained the age of twenty full years is obliged to serve in the army.

In consequence, in each year all the young men of that age must present themselves at a certain time before the military commission of the circle in which they are domiciled, to be examined as to their fitness to render service, and designated, the case happening, to the detachment in which they are to be incorporated.

This obligation to present themselves for service is not extinguished by time. Whoever does not appear at the point indicated is held to serve at a more advanced age; and, if he can be got hold of, is enrolled under the flag before any other.

Service in the army in active employ lasts three years. (Section 6 of the law above mentioned.)

During the two years following, the soldier is dismissed on leave and belongs to the reserve; thenceforward he is not called into service until a war or an increase of the active force requires it.

After the expiration of these two years, the soldier passes for seven years into the first levy of landwehr, (land-guard,) which in time of peace musters only annually for some weeks of drill.

These seven years completed, the soldier becomes a member for seven years longer of the second levy of the landwehr, which is only called out in time of war.

Whoever evades the duties of the landwehr is obliged to take part therein at a later time, and his more advanced age does not exempt him from such call.

Emigration is not permitted, except with express leave from the government. This permission cannot be granted to males between seventeen and twenty-five years of age, unless they produce a certificate from the commission for recruiting the army, testifying that they do not propose to expatriate themselves for the sole purpose of evading their military obligations. (Section 17 of the law of 31st December, 1842, on the mode in which the quality of subject of Prussia is acquired and lost. Bulletin of the Laws of the year 1843, p. 15, *et seq.*)

This certificate serves also as a guide when it is required to determine if there is reason to grant to minors authority to emigrate with their parents.

Soldiers belonging to the army in active service, or to the reserve, do not obtain leave to expatriate themselves until they have been dismissed.

On the other hand, the service in the first or second levy of the landwehr does not prevent the person who may still be subject to such service from disengaging himself from the ties which bind him to his native land; one exception alone is made to this regulation, which is when the landwehr is called into active service.

Whoever leaves Prussia without permission, and thereby evades service either in the army, in active service, or the landwehr, incurs a penalty of 50 to 1,000 crowns, or incurs an imprisonment of one month to one year. (Section 110 of the Penal Code of April 14, 1851.)

But the payment of the penalty or the infliction of the punishment of imprisonment does not dispense with the obligation to render the military service. This obligation continues the rather until he who may have neglected his duty discharges it completely.

Proceedings are taken against such persons the moment it is perceived that they are

unlawfully absent, and without regard to the age they may mean time have attained.

The permission to emigrate, of which a formula is annexed to this memorandum, puts an end to the quality of Prussian subject, (section 20 of the law of December 31, 1842,) and whoever has obtained it is no longer under any obligation to serve in the army. Unless there be a formal exception, this permission embraces also the wife of the individual to whom it has been granted, as well as the minor children, who are still subject to the paternal authority.

BERLIN, *January* 6, 1859.

Form.

[Translation.]

The undersigned royal government certifies hereby, that a permit of emigration has been granted to, (name, profession, residence,) at his request, and for his emigration to ——— with his wife, formerly Miss ———, and the following minor children, still being under the authority of the father:

[Name and time of their birth.]

This permit of emigration causes the loss of the quality of Prussian subject from the date of its delivery, only, however, for those persons expressly named therein.

The day of ———.

ROYAL PRUSSIAN GOVERNMENT.

[SEAL.]

(No. ——.)

(H.)

Report by counsel to the Vienna embassy on Austrian laws.

The qualification of an Austrian subject can be attained:

I. By way of birth. The citizenship in the Austrian States is inherent in the children of Austrian subjects from their birth. (Sec. 28 of the Austrian Civil Code.)

2. A female foreigner becomes an Austrian in marying an Austrian subject. (Decree of the Imperial Chancery, 23d February, 1833, No. 2,596.)

3. By an expressed investing a foreigner with the rights of an Austrian subject. (Sec. 30 of the Civil Code.)

4. By accepting a situation in the public service. (Sec. 29 of the Civil Code.)

5. By an uninterrupted residence of 10 years a foreigner can obtain the quality of an Austrian subject, provided that he has during this time not suffered any punishment for crime, and that his behavior was always respectable. Only on this presumption such a foreigner is to be admitted to take the oath of an Austrian subject. (Sec. 29 of the Civil Code and Aulic Decree of 1st of March, 1833.)

6. In conformity with section 21 of the Patent, 24th March, 1832, an Austrian subject who has, without legal authorization, emigrated, and consequently lost his rights as an Austrian subject, can be re-established by the grace of His Imperial Majesty.

The rights arising from the quality as an Austrian subject cease:

1. In consequence of emigration, which can take place with or without the authorization of the competent authorities. (Patent, 24th March, 1832, No. 2,557.)

2. For females, on their marrying a foreigner. (Sec. 19 of the Patent, 24th March, 1832, No. 2,557.)

Particular remarks.—It is nearly impossible to give a distinct and coherent summary of all the laws concerning the mode of acquiring the quality of an Austrian subject, and the mode of losing it. The first and systematic dispositions regarding this matter are contained in the Austrian civil code. They have, however, experienced in the course of time so many alterations that the code can no longer be considered as the principal scource regulating such matters. The above cited laws, copies of which accompany this note, contain most of the now existing rules. There are, besides, some which exercise a certain influence on the subject, even if they have not been issued with the intention to give a new rule of attaining the quality of an Austrian subject. So, for instance, the now existing law in regard to trade does no longer maintain the distinction between business requiring a regular domicile in a certain place and other undertakings. Therefore the establishing of a business requiring a regular domicile can no longer be considered as a mode of acquiring the quality of an Austrian subject. This is the more accurate, as foreigners, according to this law, are fully entitled to carry on

such business in this country without undergoing any alteration of their quality as foreigners. Further, the law concerning the communes establishes the principle that any Austrian subject must be a member of a community in the country. And as no commune (gemeinde) can be compelled to receive a new member against their will, it is a natural consequence that a foreigner who is about to apply for the Austrian citizenship must secure himself the reception in some Austrian community, and that he cannot obtain the citizenship itself without having secured an eventual reception in such an Austrian community.

D. J. WINIWARTER.

VIENNA, *February* 8, 1868.

[Inclosure 1.]

Code civil, sec. 28.

On acquiert la jouissance complète des droits civils par le droit de bourgeoisie. Le droit de bourgeoisie dans nos états héréditaires appartient, par droit de naissance, aux enfants de tout bourgeois autrichien.

[Inclosure 2.—Translation.]

Court Chancery Decree of 23d February, 1833, *to all the Chief National Authorities, in pursuance of the Imperial Resolution of 26th January*, 1833.

His Imperial Royal Majesty has been pleased to decide, in addition to the methods of acquiring Austrian citizenship in the General Code of Civil Law, and in accordance with section 32 thereof, and with section 19 of the Emigration Patent of 24th March, 1832, (I. G. S., No. 2,557,) that Austrian citizenship may also be acquired by a foreign woman through her marriage with an Austrian citizen.

[Inclosure 3.]

Code civil, sec. 29.

Les étrangers acquièrent le droit de bourgeoisie autrichienne en entrant dans un service public, en entreprenant une industrie dont l'exercice exige un domicile habituel dans le pays; par un séjour non interrompu de dix années dans nos états, sous la condition toutefois que, dans ce laps de temps, l'étranger ne se sera attiré aucune peine à raison d'un délit.

[Inclosure 4.]

Code civil, sec. 30.

On peut aussi, sans l'exercice d'une industrie ou d'un metier, et avant l'écoulement de dix années, se pourvoir auprès des autorités politiques pour obtenir le droit de bourgeoisie, et celles-ci pourront l'accorder suivant l'état de la fortune, la capacité industrielle, et la moralité du demandeur.

[Inclosure 5.]

Abstract of an ordinance by Francis I, Emperor of Austria, respecting the emigration or expatriation and unauthorized absence of his subjects from their country, applicable to his German States, to Lombardy and Venice, Dalmatia, Galacia, and Lodomeria.

I. *Emigration or Expatriation.*—Any Austrian subject who leaves his own country for a foreign state without the intention of returning is to be considered as an emigrant.

II. *Lawful Emigration.*—Those who wish to emigrate must apply to the proper authority to be released from their Austrian citizenship. They must prove that they are self-dependent, and in the free exercise of their rights; they must state what members of their family are to emigrate with them; prove that they have all fulfilled their military liabilities; and show that no hinderances exist in regard to public duties. Should the application be rejected, recourse may be had to the Privy Council.

III. *Unauthorized Expatriation.*—Those who go to a foreign country without leave, with the expressed or apparent intention to return no more, are to be considered as unauthorized emigrants. Such intention is shown by the acceptance of foreign citizenship, or a foreign, civil, or military office without special permission, by joining a foreign religious institution or other association out of the empire, requiring personal attendance; by staying abroad for five years without having property or business there requiring such absence, and if the family and property of the emigrant be withdrawn from the country; by staying abroad for ten years without the previous conditions; by non-obedience to a summons of recall to the Austrian states, issued by the authorities. The five and ten years' periods are not applicable to Austrian subjects residing in states with which Austria has treaties of free emigration.

IV. *The Effects of Emigration.*—Those who emigrate with permission lose their character as Austrian subjects and are treated as foreigners. Those who emigrate without permission lose their rights of citizenship, and are liable to all the legal consequences of that loss; they lose the rank and advantages which they held in Austria, and are struck off the registers; they can neither acquire nor transfer property where this law applies; any previous testamentary dispositions with regard to such property become void; their inheritances go to the next heir after them. Their property is sequestered without prejudice to the claims thereon. Their children or descendants resident in the State are suitably maintained out of the sequestrated property. The net overplus goes to increase the property, the whole of which reverts to the heirs at the death of the expatriated owners. In special cases the sovereign can allow the children to enjoy the sequestrated property.

V. *The Children of Unauthorized Emigrants.*—Those who are born before sentence has been passed against the father do not lose their Austrian citizenship or their position during their minority, nor for 10 years after coming of age if the father be still living; nor for one year after his death, if within the 10 years; nor for three years after coming of age if the father die before they do so; and they enter upon their full rights if they return to the Austrian states within those periods. This favor is also applicable to children sent to reside abroad by an Austrian subject living himself in the country. Such children are, however, to be looked upon as foreigners if they have acquired citizenship abroad, or if they do not claim the reserved rights within the prescribed periods.

VI. *Female Subjects married to Foreigners.*—They lose the Austrian citizenship on such marriage, and if they become widows, can only regain it in the same way as any female foreigner.

VII. *Rehabitation.*—Citizenship can only be reconferred on unauthorized emigrants by permission of the sovereign; but those who have emigrated with permission may regain it in the manner prescribed in the General Code of Civil Law. Such regained citizenship is only available in regard to subsequently acquired rights.

VIII. *Unauthorized Absence.*—Subjects who go out of the state without passports or permission, or who stay away longer than the time fixed, are considered to be absent without authority; and if they cannot justify themselves they are liable for that absence alone to a penalty of from five to fifty florins, or imprisonment for from three to fourteen days, and to double the amount of fine and one or more fast-days during the imprisonments, if the absence continue for longer than three months.

IX. *Proceedings against Unauthorized Emigrants.*—The absentees are to be summoned to appear within a certain time by edicts duly promulgated in newspapers and in the neighborhoods to which they belong. If they do not appear within the appointed period proceedings are taken against them in the civil courts by order of the government, and their property is sequestrated.

X. *Proceedings against Unauthorized Absentees.*—The absentee is first to be summoned by an edict to answer for himself within three or six months, according to the circumstances; he may justify himself during those periods; if he does not, judgment is passed against him by the competent court. Appeals are allowed to the superior authority.

XI. *Provisions applicable to the proceedings in both cases.*—If the absentee or emigrant be accused of any criminal act, proceedings are taken in the criminal court, and the civil proceedings are stayed meanwhile. The judgment in the criminal proceedings is sent to the civil court for its sentence on the absence or expatriation. The sequestration is operative during the criminal proceedings.

XII. *Transitory provisions.*—Expatriation proceedings pending at the promulgation of this ordinance are to be adjudged according to it; but if former laws awarded a milder punishment, that only is to be inflicted. Sentences passed before the promulgation of this ordinance remain in full force.

The enactments of the general civil code, as well as all military conscription and police laws applicable to absentees or emigrants retain their full force and validity; all other laws and regulations on the subject are hereby annulled.

VIENNA, 24*th March*, 1832.

[Inclosure 6.—Translation.]

Court Chancery Decree of 1st March, 1833, to all the Chief Authorities of the Country.

His Imperial Royal Majesty has been pleased to command by supreme resolution of the eighth of February 1833, that from henceforth Austrian citizenship shall not be acquired by a foreigner through an uninterrupted residence of full 10 years in the countries for which the general code of civil law is binding, until he shall have given the requisite proof thereof to the chief national authority of his last dwelling-place; shall have taken the citizen's oath, by order of that authority, either to itself or at the proper district court, and shall have received a certificate of his having done so.

The foreigner shall not, however, be allowed to take that oath until the aforesaid chief national authority has been fully convinced that throughout the said time, not only has he not rendered himself liable to punishment for any crime, but that his conduct has always been peaceful, obedient to the laws and ordinances of the constituted authorities, and well-mannered, and that by his demeanor and the known tenor of his thoughts, he has never given any real ground for suspicion or complaint.

On the other hand, those foreigners who have, on the day of the publication of this supreme resolution, already completed the 10 years' uninterrupted abode in the said countries, are to be allowed to relinquish the Austrian citizenship thereby acquired, by giving proof that they had no intention of becoming Austrian citizens; this proof must, however, be produced absolutely at the latest within six months from the publication of this supreme resolution, as after that time it will no longer be allowed.

I.—Naturalization act of 1844.

[*Omitted: the provisions of the act of* 1870 (*printed ante*) *having been substituted for it.*]

K.—British diplomatic and consular circulars. (*Omitted.*)

L.—Extracts from Mr. Vernon Harcourt's letters. (*Omitted.*)

M.—Report of the Committee on Foreign Affairs concerning the rights of American citizens in foreign states, in the House of Representatives, January 27, 1868.

[*N. B.—Reference for this report is made to the documents printed by order of Congress.*]

N.—Naturalization statutes.

N. B.—The act of 1870, *ante*, is deemed to be ample to give a knowledge of the present legislation of Great Britain. It has not been thought necessary to reprint this title.

APPENDIX No. II.

DISABILITIES OF ALIENS.—REPORTS FROM FOREIGN STATES.

The accompanying circular was sent from the foreign office to Her Majesty's representatives at European courts and in the United States:

FOREIGN OFFICE, *June* 16, 1868.

"I have to instruct you to furnish me, with as little delay as possible, with a report for the naturalization commission, on the disabilities, if any, to which aliens residing in ——— are subjected by ——— law;" and the following dispatches were received in reply:

AUSTRIA.

VIENNA, *June* 23, 1868.

MY LORD: In compliance with the instructions contained in your lordship's dispatch of the 16th instant, I addressed a note to Baron Benst, copy of which I have the honor to inclose, requesting the information desired by Her Majesty's government as to the disabilities of aliens, at the earliest convenience of the Austrian government, but as

some time will probably elapse before I shall receive an official reply, I instructed Monsieur Winiwarter, the legal adviser to Her Majesty's embassy, to furnish me with the Austrian law on the subject.

I inclose a copy of Monsieur Winiwarter's reply.

I have, &c.,

BLOOMFIELD.

The Lord STANLEY, M. P.,
&c., &c., &c.

VIENNA, *June* 22, 1868.

M. LE BARON: Her Majesty's government being desirous to obtain information for the use of the naturalization commission, now sitting in London, respecting the disabilities, if any, to which aliens residing in Austria are subjected by Austrian law, I have the honor to request your excellency's good offices in procuring the information required as soon as it can be conveniently furnished by the imperial government.

I avail, &c.,

BLOOMFIELD.

His Excellency the BARON DE BEUST,
&c., &c., &c.

VIENNA, *June* 22, 1868.

YOUR EXCELLENCY: In answer to the letter 21st instant your excellency addressed me, I have the honor of submitting to your excellency a memorandum containing the most important disabilities to which aliens residing in Austria are subject by Austrian law. I must state at the same time that no particular law exists by which all these disabilities could be ascertained.

There exist on the contrary many laws which prescribe that for certain professions, positions in life, and occupations, the Austrian citizenship is required. From these laws, which have been issued at very different periods, I have extracted the enumeration of cases in which aliens do not enjoy the same rights as the Austrian subjects themselves.

I might further state that my information holds only good for the so-called German provinces, that is to say, for the kingdoms and countries represented by the Reichsrath. With regard to Hungary I can only say that a new law regulating the position of the Hungarian citizen and of foreigners is to be discussed in the two houses, but has not yet passed.

I have, &c.,

D. WINIWARTER.

The Lord BLOOMFIELD,
&c., &c., &c.

LEGAL ADVICE.

The rights and the legal position of aliens residing in Austria are essentially regulated by § 33 of the Austrian civil code, which runs as follows:

"Foreigners have in general equal civil rights and obligations with the natives if the quality of a citizen is not expressly required for the enjoyment of these rights. Foreigners must also, in order to enjoy the same rights as natives, prove in cases of doubt that the state to which they belong will likewise treat the citizens of this country in regard to the rights in question like its own."

According to this law foreigners enjoy the same civil rights with the Austrian citizens, if for the enjoyment of a certain right the qualifications of an Austrian citizen are not expressly required. On the other hand they are subject to the same obligations as the Austrians. There is a fundamental exception from this general rule respecting the citizens of states which do not confer on Austrians the same rights which their own subjects legally enjoy.

A total enumeration of cases in which the Austrian citizenship is expressly required is hardly possible, and therefore I cannot guarantee that the following list of cases in which foreigners are not in possession of the same rights as Austrian subjects will be complete. I can only say that no case of any importance has been overlooked. Foreigners cannot—

1. Receive the appointment of public functionaries, (official.)
2. Nor those of advocates, notaries, or public agents.
3. Foreigners cannot be superiors of religious orders.
4. If a foreigner wishes to commence a public trade or business, it is not sufficient to give notice to the board of trade of his intended project, but a special concession of the home department is besides required.
5. Foreigners cannot be admitted to the military service.
6. They cannot he appointed guardians or committees for Austrian minors or Austrian subjects under committee.

7. They have not the right of constituency for the diets and the Reichsrath.
8. Nor have they the right of being elected as such deputies.
9. They cannot be admitted to the membership of political associations.
10. They are not authorized to act as undertakers, directors, or managers of public meetings, the object of which is the discussion of political affairs.
11. They have not the right of election for the common council and cannot be elected as such members.
12. They cannot obtain the position of a sworn broker, (agent of exchange.)
13. They cannot exercise the profession of hawker.
14. Physicians, surgeons, and midwives, as well as apothecaries, if foreigners, are not admitted to the practice of their respective professions till they have passed the legal examinations of the country.
15. Foreigners cannot be directors of public schools or educational establishments; as little can they become professors of a university or of any public institute.
16. The personal capacity of foreigners is in regard of their transactions to be judged of according to the laws of their own country, viz: Although an Austrian has become of age by completion of his 24th year, a foreigner, however, of 24 years cannot be regarded as of age if the laws of his country requires a greater number of years. In this regard the foreigners may not be able to enjoy the same rights as the Austrians.

Vienna, 22d June, 1868.

D. WINIWARTER.

BADEN.

STUTTGART, *July* 14, 1868.

MY LORD: In conformity with your lordship's instructions of the 12th June, I have the honor to inclose herewith translation of a note addressed by Baron Freydorf to Mr. Baillie, containing information with respect to the position of aliens in the Grand Duchy of Baden, from which it will be perceived that aliens are practically subject there to no disabilities whatever, except exclusion from political and municipal rights.

I have, &c.,

G. J. R. GORDON.

Lord STANLEY, M. P.,
&c., &c. &c.

[Translation.]

Within the whole compass of private rights, especially in respect to the right of acquiring and possessing property of every kind, landed property included, aliens stand according to Baden law upon a footing of complete equality with native subjects.

As regards the right of settlement and of engaging in trade or industry, the Baden government are entitled, if they please, to demand reciprocity as the condition of admission to such rights. They have, however, never as yet taken any advantage of their authority in this respect, so that in point of fact aliens residing in Baden are subject to no disabilities in regard to the right of settlement, or of engaging in trade or industry.

On the other hand, aliens are of course excluded from political rights, from offices in church and state, and from such rights as appertain to persons as members of a corporate community.

I avail, &c.

FREYDORF,
&c., &c.

E. M. BAILLIE, Esq.,
&c., &c., &c.

BAVARIA.

MUNICH, *July* 10, 1868.

MY LORD: Mr. Fenton having, on the receipt of your lordship's circular dispatch, of the 16th ultimo, applied to the Bavarian government for the information desired by your lordship, for the use of the Naturalization Commission, on the disabilities to which aliens residing in Bavaria might be subjected, I yesterday evening received in reply from Prince Hohenlohe the note of the 5th instant and the memorandum of which I have the honor to inclose herewith copies and translations.

This memorandum contains such full particulars on the legal position of foreigners in Bavaria that I have no occasion to add any further explanations on the subject.

Your lordship will perceive that Prince Hoheulohe remarks in his note that as the principles of the Bavarian poor-law and communal legislation are at present undergoiug a legislative revision, it had been necessary to omit treating, in the memorandum, of the position of foreigners with respect to these two institutions.

I have, &c.,

HENRY F. HOWARD.

The Lord STANLEY, M. P.,
&c., &c., &c.

[Trauslation.]

MUNICH, *July* 5, 1868.

The undersigned has had the honor to receive the note of the 22d ultimo, by which the royal British chargé d'affaires *ad interim*, Mr. H. P. Fenton, requested communication of the regulations in force in the kingdom relative to the disabilities to which foreigners are liable in this kingdom. The inclosure contains a review of the legal provisions which are in force in this respect, and the only remark to be made is, that the principles of the poor-law and of the communal legislation are at present undergoing a legislative transformation, on which account a discussion of the position of foreigners with regard to these two institutions has had to be omitted.

I have, &c.,

PRINCE HOHENLOHE.

Sir HENRY F. HOWARD, K. C. B.,
&c., &c., &c.

THE LEGAL POSITION OF FOREIGNERS IN BAVARIA.

The general principle rules that a foreigner enjoys equal rights with a native of the country, to which the only exception made is where such exception is legally enacted, or when a royal ordinance applies the principle of retaliation on account of disadvantages to which Bavarian subjects are liable abroad, as compared to persons belonging to the country which imposes the disadvantages.

The legal disabilities relate to:

I.—*The domain of civil law and civil proceedings.*

While a preference to native creditors or debtors is excluded by § 34 of the code of priority of the 1st of June, 1822, in cases of bankruptcy, paragraph 8 I of the code of procedure of the 22d of July, 1819, leaves it optional to the defendant, being a native of the country, to require of the foreign plaintiff, when he does not possess any estate situated in Bavaria, the deposit of a security for the future payment of the costs of the lawsuit. With regard to foreigners, and as is the case generally when there is the danger of loss, the judicial code affords the security of arrest, which likewise then determines the *forum arresti*. In this respect, likewise, international treaties, as, for example, with Würtemberg, have introduced milder enactments in favor of the subjects of the respective states. Moreover, article 76 of the introductory law to the German commercial code places the citizens of the states of the former German Confederation on an equality with natives of the country. Foreigners are likewise capable of acquiring real property on the condition of reciprocity.

II.—*Penal law and penal procedure.*

Foreigners are subject to the Bavarian penal jurisdiction when they have either committed a penal act in the country or when they shall have been guilty beyond the Bavarian frontiers of such an act against the king, the Bavarian state, or a person belonging to it.—A, 12, penal code.

If a foreigner has been condemned in Bavaria on account of a crime, he will be expelled from the country after having undergone his punishment; the same takes place with regard to convictions on account of offenses or contraventions in the cases determined by law.—Art. 43, *loc. cit.*

In actions for libel the demand of a security for the costs from a foreign plaintiff is optional, according to article 61, section 3, of the introductory law to the penal code.

In respect to foreigners, concerning whom well-founded doubts may be entertained of their appearing before the court if summoned to do so, preliminary arrest is moreover admissible, according to article 41, section 3, *loc cit.*, on account of any penal act.

III.—*In the domain of the constitutional and administrative law the foreigner is excluded.*

1. As not being in possession of the *Bavarian naturalization, (indigenat,) from all civil rights:*—§ 9 of the first edict of the constitution.

If he acquires the naturalization, it is only after the expiration of six years that he enters into the enjoyment of the above-mentioned rights. The foreigner, as such, is therefore excluded from the active and passive electoral franchise for communal, district, provincial, and parliamentary elections, from admission into state offices and the possession of benefices; he cannot be elected as a juryman, nor as a member of a committee of taxation. Crown and superior court offices, superior military posts, are closed to the foreigner, although it is not the possession of the fullest rights of citizenship, but merely that of naturalization, which gives a claim to many of the above-named rights.

2. *The trade law of the 18th of January*, 1868, only reserves in article 2 the sanction of the state for foreign joint-stock companies, branch establishments, and other companies established for trading purposes, inasmuch as the provisions of state treaties do not determine otherwise. Even § 21 of the ordinance relative to the hawking trade, of the 28th of April of last year, places foreigners on a complete equality with the natives of the country, excepting in cases of retaliation. Foreign medical men receive from the provincial governments or from the ministry of state for the interior the permission temporarily to practice in the country. Medical men who only sojourn temporarily in Bavaria, and who are entitled to practice in their own country only, have the right of giving consultations, not however that of ordinary practice.—§ 15, ordinance of the 29th of January, 1865, concerning the medical art.

3. Article 10, section 2, of the military law of the 30th of January of this year, prohibits the permanent residence in the kingdom, as foreigners, of those emigrants who have not yet attained their 32d year.

4. Foreigners are permitted to reside in any commune of the kingdom when they can bring sufficient proof of their nationality and place of legal settlement, and when there is no legal impediment to their residence. The expulsion of a foreigner from a commune is only admissible on the same legal grounds (article 45 of the law of settlement of the 16th of April of this year) in virtue of which the expulsion of a Bavarian subject not having a right of settlement in the locality could likewise take place. It is only the ministry of the interior which, except in the aforesaid cases, is entitled to expel a foreigner from the country on grounds connected with the internal or external security of the state.

5. Only the person who possesses the Bavarian naturalization can acquire a *right of settlement* in a commune of the kingdom; foreigners are consequently excluded from it.—Article 1–10, *loc. cit.*

A foreign woman, however, who marries a Bavarian acquires thereby the naturalization (indigenat) and the settlement of the husband.—§ 3 of annex 1 to the constitution and article 3 of the law of settlement.

6. Foreigners can likewise marry in Bavaria when they can prove to the respective district police authorities that, according to the laws in force in the country of the husband, the contracting of this marriage is admissible, and has the same effects as if it had taken place in that country.

If the future wife is a foreigner she has to produce a permission of emigration, if such a permission is necessary according to the laws of her own country for emigration. —Article 34, &c., and article 39 of the law of settlement.

7. Foreigners, independently of cases of retaliation, and with the sole exception of those who carry on a wandering trade, or who belong to the class of journeymen, servants, and trade assistants, require no *permit for traveling.*—§ 2 of the royal ordinance of the 9th of December, 1865, respecting passports.

BELGIUM.

No. 96.] BRUSSELS, *July* 4, 1868.

MY LORD: I have the honor to acknowledge the receipt of your lordship's dispatch circular of the 16th instant, instructing me to furnish you with a report on the disabilities, if any, to which aliens residing in Belgium are subjected by Belgian law.

The disabilities under which aliens labor in this country are so various that I found it necessary to apply to the government for more details than I felt myself competent to afford, but as your lordship desires that information on the subject should be supplied with as little delay as possible I herewith transmit copies of two laws which bear directly upon the residence of foreigners in Belgium, and which may be considered as embodying the material features of Belgian practice toward aliens.

The first is a law which is renewed from time to time, the last renewal being on the

7th of July, 1865, for a period of three years, investing the government with the control over the residence of foreigners. The government exercises the power of sending aliens out of the country in cases, 1st, of vagrancy, or when the resources for subsistence are not proved when required to be declared.

2d. Of scandalous, immoral, or turbulent conduct offensive to the public.

3d. Of political proceedings by agitation, writing, or conspiracy against the tranquility of a friendly state in abuse of the hospitality here afforded them.

The second[1] law in question passed this year extends the power hitherto in force for the extradition of foreigners accused or guilty of crimes committed in their own countries, and constitutes the basis of the extradition treaties of which copies were forwarded in my dispatch of January 20.

Until April, 1865, British subjects were not entitled to hold or inherit freehold property situate in Belgium. At present all foreigners in that respect are placed upon the same footing as Belgians. Further, distinctions between foreigners and natives are made in regard to judicial processes; for instance, in civil actions, a foreigner cannot obtain an order of provisional arrest either against a Belgian or another foreigner; in commercial actions he is under the same disability. But the Belgian can obtain an order of provisional arrest against a foreigner upon a simple petition through his "avoué" to the President of the Tribunal of Première Instance. In all tribunals except the Tribunal of Commerce he can be called upon at a stage of proceedings to give security for costs, unless he has letters of domicile from the King. For a foreigner to acquire the same civil position as a Belgian he requires a letter of domicile from the King. To acquire a position political as well as civil he requires an act of legislature. The letter of domicile confers on the foreigner the right of provisional arrest in all cases where a Belgian would have such rights. He cannot be called upon as plaintiff in any action to give security for costs; he is also exempt from provisional arrest except in such cases where a Belgian would not be exempt, for instance, in criminal or correctional proceedings.

The foreigner is not liable to the conscription for the army, nor is active service required of him in the Civic Guard, though, for the latter, he is called upon to contribute a pecuniary amount.

I have, &c.,

HOWARD DE WALDEN.

The Lord STANLEY, M. P., *&c., &c., &c.*

MINISTÈRE DE LA JUSTICE.

Loi relative aux étrangers.[2]

LÉOPOLD, roi des Belges, à tous présents et à venir, salut :

Les chambres ont adopté et nous sanctionnons ce qui suit :

ART. I. L'étranger résidant en Belgique, qui, par sa conduite, compromet la tranquillité publique, ou qui a été poursuivi ou condamné à l'étranger pour les crimes ou délits qui donnent lieu à l'extradition, conformément à la loi du 1 octobre 1833, peut être contraint par le gouvernement de s'éloigner d'un certain lieu, d'habiter dans un lieu déterminé, ou même de sortir du royaume.

L'arrêté royal enjoignant à un étranger de sortir du royaume par ce qu'il compromet la tranquillité publique sera délibéré en conseil des ministres.

ART. II. Les dispositions de l'article précédent ne pourront être appliquées aux étrangers qui se trouvent dans un des cas suivants, pourvu que la nation à laquelle ils appartiennent soit en paix avec la Belgique :

1°. À l'étranger autorisé à établir son domicile dans le royaume.

2°. À l'étranger marié avec une femme belge, dont il a des enfants nés en Belgique pendant sa résidence dans le pays.

3°. À l'étranger décoré de la croix de fer.

ART. III. L'arrêté royal porté en vertu de l'art. 1er sera signifié par huissier à l'étranger qu'il concerne.

Il sera accordé à l'étranger un délai qui devra être d'un jour franct au moins.

ART. IV. L'étranger qui aura reçu l'injonction de sortir du royaume sera tenu de dé-

[1] Not printed for the Commission.

[2] Chamber des representants, session de 1864-1865: Documents parlementaires. Expose des motifs et texte du projet de loi. Séance du 17 novembre 1864, pp. 108. Rapport. Séance du 7 juin 1865, pp. 833-836. Annales parlementaires. Discussion générale. Séances des 22 juin 1865, pp. 1235-1246; 23 juin, pp. 1247-1257; 24 juin, pp. 1259-1270: 27 juin, pp. 1271-1283; et 28 juin, pp. 1285-1296. Discussion des articles et adoption. Séance du 29 juin, pp. 1297-1311.

Senat:—Documents parlementaires. Rapport. Séance du 30 juin 1865, p. lxxii. Annales parlementaires. Discussion générale. Séance du 4 juillet 1865, pp, 526-527. Discussion des articles et adoption. Séance du 5 juillet pp. 529-530.

signer la frontière par laquelle il sortira ; il recevra une feuille de route réglant l'itinéraire de son voyage et la durée de son séjour dans chaque lieu où il doit passer. En cas de contravention à l'une ou l'autre de ces dispositions, il sera conduit hors du royaume par la force publique.

ART. V. Le gouvernement pourra enjoindre de sortir du royaume a l'étranger qui quittera la résidence qui lui aura été désigné.

ART. VI. Si l'étranger auquel il aura été enjoint de sortir du royaume rentre sur le territoire, il pourra être poursuivi et il sera condamné, pour ce fait, à un emprisonnement de quinze jours à six mois ; et à l'expiration de sa peine, il sera conduit à la frontière.

ART. VII. La présente loi ne sera obligatoire que pendant trois ans, à moins qu'elle ne soit renouvelée.

Promulguons la présente loi, ordonnons qu'elle soit revêtue du sceau de l'état, et publiée par la voie du Moniteur.

Donné à Laeken, le 7 juillet 1865.

LÉOPOLD.

Par le roi :
Le ministre de la justice,
VICTOR TESCH.

Scellé du sceau de l'état :
Le ministre de la justice,
VICTOR TESCH.

BRUSSELS, *July* 16, 1868.

MY LORD : With referenee to my dispatch of tbe 4th instant, I have the honor herewith to inclose a copy of a note which I have received from the minister of foreign affairs, affording the information regarding the disabilities which affect aliens in this country, which was desired for the use of the naturalization commission in your lordship's dispatch of the 16th ultimo.

I have, &c.,

HOWARD DE WALDEN AND SEAFORD.

The Lord STANLEY, M. P., *&c.*, *&c.*, *&c.*

BRUXELLES, 13 *juillet* 1868.

MY LORD : Sous la date du 20 juin dernier votre excellence m'a exprimé le désir de recevoir des rensignements sur les incapacités légales auxquelles sont soumis, en Belgique les étrangers qui y résident.

En ce qui concerne les droits politique, my lord, les étrangers en sont exclus. Ils ne sont ni électeurs ni éligibles pour la formation des corps politiques. Ils ne peuvent être nommés à des fonctions publiques ui être temoin dans un acte notarié. (Art. 9, loi 25 ventose an XI.)

L'étranger naturalisé est assimilé au Belge. Toutefois la loi exige la grande naturalisation pour être électeur ou éligible pour la formation des chambres legislatives. (Art. 1 et 41 de la loi du 3 mars 1831.)

Quant aux droits civils, l'étranger jouit en Belgique des mêmes droits que ceux qui sont accordes aux Belges par les traités de la nation à laquelle l'étranger appartient. (Article 11 du code civil.)

L'étranger qui a été admis par autorisation royale à établir son domicile en Belgique y jouit de tous les droits civils tant qu'il continue d'y résider. (Article 10 du même code.)

En dehors et abstraction faite des cas prévus par ces deux dispositions la condition des étrangers n'est déterminée par aucune règle bien certaine, et est diversement appréciée dans la doctrine et la jurisprudence.

Pour ce qui est des incapacités auxquelles ils peuvent être soumis la loi n'a expressément determinée que la suivante :

L'étranger demandeur dans un procès en matière civile est tenu de donner caution pour le paiement des frais et dommages-intérêts résultant du procès, à moins qu'il ne possède en Belgique des immeubles d'une valeur suffisante pour assurer ce paiement. (Article 16 du code civil.) L'étranger est passible de la contrainte par corps pour l'exécution de tout jugement de condamnation, conformément à l'article 10 du 21 mars 1859.

Aux termes de l'article 11 de cette loi, il peut même être arrêté provisoirement avant le jugement de condamnation, en vertu d'une ordonnance du président du tribunal de 1re instance ; mais la legislature se trouve actuellement saisie d'un projet de loi portant l'abolition de la contrainte par corps même à l'égard des ètrangers.

L'étranger débiteur n'est pas admis au bénéfice de la cession de biens, (article 905, c. proc. civile.)

Les étrangers ont le droit de succéder, de disposer, et de recevoir de la même manière

que les Belges dans toute l'étendue du royaume. Dans le cas de partage d'une même succession entre des cohéritiers étrangers et Belges, ceux-ci prélèvent sur les bien situés en Belgique une portion égale à la valeur des bien situés en pays étrangers dont ils seraient exclus à quelque titre que ce soit en vertu des lois et coutumes légales. (Loi du 27 avril 1867.)

L'étranger peut être expulsé du royaume dans les cas prévus par la loi du 7 juillet 1867, prorogée récemment.

Enfin l'étranger peut être extradét dans les cas prévus par la loi d'extradition.

Veuillez agréer, &c.,

(Signé pour le ministre absent)
le Secrétaire Général,
BARON LAMBEMONT.

Lord HOWARD de WALDEN et SEAFORD, G. C. B.

DENMARK.

COPENHAGEN, *June* 27, 1868.

MY LORD: With reference to your lordship's dispatch of the 16th instant, I have the honor to inclose a copy of a note which I have received from Count Frijs, in reply to my inquiries on the position of aliens in Denmark.

It appears from the statements of his excellency that foreigners resident in this country enjoy the same private rights as natives. They are, however, entirely excluded from all political rights whatever, and are debarred from all employments, civil or military, under the Crown. His excellency's note passes in review these disabilities, and seems to contain all the information which I was ordered by your lordship to procure.

I have, &c.,

CHARLES LENNOX WYKE.

The Rt. Hon. Lord STANLEY, M. P.

COPENHAGUE, *le* 25 *juin* 1868.

MONSIEUR LE CHEVALIER: En vous remettant sous ce pli la circulaire dans laquelle Stanley vous demande des renseignements sur la position des étrangers établis en Danemark, j'ai l'honneur de vous informer que pour ce qui regarde les droits particuliers et privés il n'existe aucune différence entre la condition des étrangers domiciliés dans le pays et celle des nationaux. Par contre, les droits politiques sont réservés aux seuls nationaux. Pour entrer au service de l'état comme employé, pour prendre part aux élections des membres de la représentation nationale ou des conseils municipaux, enfin, pour siéger dans ces assemblées la qualité de national est indispensable. Cette qualité revient de droit à tout individu né dans le pays, quelle que soit la nationalité des parents, sauf les cas où le séjour des parents n'est que temporaire; autrement il faut qu'une loi spéciale et nominative accorde la naturalisation à celui qui veut l'obtenir.

Je crois devoir encore ajouter, pour compléter les informations dont il s'agit, que d'après les réglements des chapitres de chanoinesses fondés en Danemark la nationalité danoise est de même requise chez les personnes qui désirent être admises dans ces établissements.

Veuillez agréer, &c.,

(Signed) FRIJS.

A Sir CHARLES WYKE,
&c., &c., &c.

BRITISH LEGATION,
Copenhagen, July 30, 1868.

MY LORD: As a supplement to my dispatch of the 27th ultimo, on the position of aliens in Denmark, I have the honor to inclose herewith, at the request of the naturalization commission, the written opinion of MR. BROCK, a distinguished Danish lawyer, with reference:

1st. To the oath required of aliens entering on certain professions.

2dly. Whether the birth in Denmark of a son of an alien constitutes a Danish subject?

Your lordship will see by the inclosed document that—

1st. The "Borgherskab" or Burgherbur oath was abrogated in 1859. The oath now taken by brokers, translaters, &c., is non-political, and limited to the faithful performance of their office.

2d. The son of an alien born in Denmark is considered a Dane to all intents and purposes so long as he remains in Denmark.

I have, &c.,

CHARLES LENNOX WYKE.

The Lord STANLEY, M. P.,
&c., &c., &c.

COPENHAGEN, *July* 26, 1868.

SIR: Your excellency has asked my opinion on the following questions:

1st. Is the "Borgerbur" oath still required for entering on certain professions, and, if so, what professions:

2d. Does the fact of birth in Denmark constitute a son of an alien a Danish subject?

Answer. 1st. The "Borgerbur" oath required by the Danish law for entering on professions of different kinds has been abolished by the law of December 29, 1857. The oath still taken by brokers, translators, and such persons of public trust, that they will faithfully perform the duties imposing on their office, has no influence upon their situation as subjects of the Danish Crown, and is no oath of allegiance.

2d. The son of an alien, born in Denmark, is regarded a Dane, if he remains here.

I have, &c.,

GUSTAV BROCK,
Advocate of the Supreme Court.

Sir CHARLES L. WYKE, K. C. B.,
&c., &c., &c.

FRANCE.

PARIS, *June* 29, 1868.

MY LORD: I have the honor to inclose herewith a copy of a report by Mr. Treitt, legal adviser of this embassy, upon the disabilities to which aliens residing in France are subjected by law, which I requested that gentleman to draw up upon receiving your lordship's dispatch of the 16th instant.

I have, &c.,

LYONS.

The Right Hon. Lord STANLEY,
&c., &c., &c.

La question posée par le foreign office est la suivante:

"Quelles son les incapacités auxquelles les étrangers résidant en France sont sujets selon la loi de ce pays?"

Il y a une distinction à faire:

1°. Entre les étrangers résidant simplement en France; et

2°. Entre les étrangers admis par autorisation du gouvernement à établir leur domicile en France.

La loi considère comme étrangers ceux qui sont nés de parents étrangers soit à l'étranger, soit en France, et qui n'ont pas été naturalisés.

La condition des étrangers a varié selon les diverses législations qui ont regné sur la France; mais dans le présent document, la position des étrangers est brièvement exposée, telle que la font les lois, la doctrine, et la jurisprudence actuellement en vigueur.

§ I. Des étrangers simplement résidant en France, et n'ayant ni demandé, ni reçu l'autorisation d'établir leur domicile en France.

Leurs capacités.—Tous les étrangers, sans la moindre restriction ont, en France, le droit de succéder, de disposer, de recevoir; il n'y a aucune distinction entre les biens meubles et les biens immobiliers; l'égalité entre les nationaux et les étrangers est *absolue*, que les étrangers soient en France ou hors de France. Cet état de choses existe depuis la loi du 14 juillet 1819, qui a abrogé les articles 726 et 912 du code Napoléon, et aboli tous les droits qui frappaient les étrangers, tels que droits d'aubaine, &c.

Cependant cette loi contient une seule restriction qui est toute d'équité:

"Dans le cas de partage d'une même succession entre des cohéritiers étrangers et français, ceux-ci prélèveront sur les biens situés en France une portion égale à la valeur des biens situés en pays étranger, dont ils seraient exclus, à quelque titre que se soit, en vertu des lois et contumes locales."

Les étrangers comme les Français peuvent acquérir des biens en France, les hypothéquer, les aliéner, et faire à leur égard tous les contrats permis par la loi.

Ils ont le droit de prescription.

Le commerce et l'industrie sont absolument libres pour les étrangers; ils exercent le droit industriel à l'égal les regnicoles et peuvent obtenir toutes espèces de concessions; même celle de mines.

La propriété industrielle, artistique et littéraire a été objet de traités internationaux.

Dans les communes où les étrangers résident, ils participent à certaines jouissances communales, telles que la vaine pâture, la distribution du bois des forêts appartenant aux communes, &c.

En un mot, on peut dire que, en ce qui concerne le statut réel et *le droit de propriété*, les étrangers sont dans une condition identique à celle des Français.

Quant au *statut personnel*, ils jouissent de tous les droits de famille comme père, fils, et époux.

Ils ont le droit de chasse et de pêche et de port d'armes.

Ils ont la liberté du culte et la liberté individuelle et impriment leurs opinions comme les Français eux-mêmes.

Des auteurs accreditiés soutiennent qu'ils peuvent se créer une famille légale par l'adoption d'enfants selon les lois de France, qu'ils peuvent être tuteurs et jouir de tous le droits dont la loi a entouré la protection de la famille.

Leurs incapacités.—Mais les étrangers sont exclus de toutes les fonctions politiques gouvernementales. Ils ne peuvent être temoins dans certains actes authentiques puisque la loi a dit: *Les temoins seront majeurs français, du sexe masculin*, &c.

Ils ne peuvent être arbitres dans les litiges parceque l'arbitrage en fait des juges temporaires.

Il faut aux étrangers une autorisation spéciale pour exercer la pharmacie, la chirurgie, ou la médecine.

Les emplois publics, comme prêtres dans les divers cultes, comme directeurs de postes et d'autre positions, qui exigent un serment au chef de l'état, sont interdits aux étrangers; c'est pourquoi ils ne peuvent être ni avocats, ni notaires, ni avoués, &c., &c.

Ils ne font point partie de la garde nationale, ni de l'armée, ni d'aucun jury.

Si les étrangers sont demandeurs en justice, le défendeur peut leur demander la *caution judicatum solvi*, à moins qu'il ne s'agisse de matières commerciales, où cette caution n'existe pas. Avant la récente abolition de la contrainte par corps, les étrangers pouvaient être arrêtés préventivement.

En cas de faillite, les étrangers jouissent des mêmes droits que les Français, seulement ils ne sont pas admis à la cession de leurs biens à leurs créanciers pour se libérer ainsi de toutes leurs dettes.

D'éminents juristes pensent que même l'état de guerre ne suspend point contre l'étranger son droit d'actionner le Français devant les tribunaux de France pour des obligations, *même contractées à l'étranger*.

En matière civile, le tribunal français peut refuser sa juridiction à deux étrangers, mais en matière commerciale, deux étrangers ont droit à la justice française dans tous les cas.

Enfin la loi du 3 décembre 1849 (article 7) autorise le gouvernement à expulser du territoire de l'empire les étrangers qui y voyagent ou y résident.

Ce droit du gouvernement est arbitraire et absolu.

§ II. Des étrangers domiciliés ou admis à l'exercice des droits civils par autorisation gouvernementale.

L'étranger, à moins d'obtenir des lettres de grande naturalisation accordées seulement à de grands services exceptionnels, ne peut être naturalisé en France qu'après un stage de dix[1] années qui courent du jour ou le gouvernement lui a accordé le domicile.

L'admission au domicile fait cesser en faveur de l'étranger qui l'a obtenue certaines incapacités qui frappent l'étranger simplement résidant. L'admission au domicile n'enlève pas la qualité d'étranger, mais il donne aux enfants nés en France de parents étrangers, le droit de réclamer à leur majorité la qualité de Français, sans autre formalité que de se soumettre aux charges des lois françaises, tels que le recrutement, &c. (Article 9 du code Napoléon.)

Les étrangers admis au domicile jouissent de tous les droits civils; ce sont les termes formels de l'article 13 du code Napoléon; il en résulte que même, avant la loi du 14 juillet 1819 ci-dessus rapportée, l'étranger domicilié était capable de recevoir, de disposer, &c., comme le Français lui-même; il peut procéder en justice sans être soumis à la caution *judicatum solvi*.

Il est admis au bénéfice de la cession de ses biens à ses créanciers pour se libérer de toutes ses dettes.

Avant l'abolition de la contrainte par corps, l'étranger domicilié n'y était sujet que dans les mêmes cas que le Français; et il pouvait lui-même exercer la contrainte par corps contre les étrangers.

Bref, sauf les droits politiques, l'étranger domicilié jouit des droits civils comme le regnicole; cependant comme il est toujours étranger, il ne peut être témoin dans certains acte authentiques ni être arbitre pusque l'arbitrage est une juridiction.

Le domicile acquis en France ne délie pas l'étranger des obligations que le statut personnel de son pays lui impose ni de ses devoirs envers sa mère patrie.

Le droit de domicile peut être retiré à une étranger par le gouvernement sur un avis due conseil d'état.

Mais malgré l'admission au domicile le droit d'expulsion écrit dans la loi du 3 décembre 1849 reste tout entier aux mains du gouvernement.

[1] Reduced to three years by the law of the 29th of June, 1867, (Memorandum,) C. S. A. A.

Certains pays ont fait avec la France des traités particuliers pour la jouissance des droits civils. Ainsi un traité avec la Sardaigne du 24 mars 1760 dispense les sujets Sardes de la caution *judicatum solvi*.

Il y a d'autres traités qui réservent à des pays étrangers le traitement de la nation la plus favorisée.[1]

Mais de pareils traités sont presque superflus, en présence du petit nombre d'incapacités qui frappent les étrangers en France et qui apartiennent presque toutes à l'ordre politique ou aux fonctions qui entraînent la prestation d'un serment au souverain, car de tout ce qui vient d'être dit on peut conclure que par suite des progrès de la législation et de la jurisprudence il n'y a plus guère de différence entre l'étranger *résidant domicilié*, si ce n'est que ce dernier n'est plus soumis à la caution *judicatum solvi*, et que ses enfants nés en France ont une plus grande facilité pour acquérir la qualité de Français.

En résumé, l'état et la capacité de l'étranger sont réglés par les lois de son pays; son statut personnel l'accompagne partout; mais en France cet étranger est capable, comme le regnicole, de tout les contrats réels ou personnels reconnus par la loi française; au point de vue du *droit privé* la condition de l'étranger soit *résidant* soit *domicilié*, et la condition du Français ne diffèrent pas beaucoup aujourd'hui.

La jurisprudence tend incessamment à améliorer encore la condition des étrangers; on ne leur refuse plus que les droits qui leur sont expressement deniés par des lois non encore modifiées; et ils jouissent d'une manière absolute de tous les droits que dérivent du droit des gens.

Fait à Paris le 28 juin 1868.

(Signé) W. TREITT,
Avocat à la Cour Impériale,
Legal Adviser to the British Embassy.

GREECE.

ATHENS, *July* 16, 1868.

MY LORD: In compliance with the instructions contained in your lordship's dispatch of the 16th ultimo, I have the honor to transmit herewith to your lordship a copy of a report drawn up by the lawyer employed by this legation, on the subject of the disabilities to which aliens residing in Greece are subjected by Greek law.

I have, &c.,

E. M. ERSKINE.

The Rt. Hon. Lord STANLEY, M. P., &c.

Notice sur les incapacités légales des étrangers en Grèce.

1°. En droit public:

Aux termes de l'art. 3 du code civil grec, les lois d'ordre public (de police et de sûreté) obligent tous ceux qui se trouvent en Grèce, par suite, les Grecs aussi bien que les étrangers. L'hospitalité, que l'étranger reçoit en entrant dans le pays, l'oblige à respecter les lois et les arrêtés de police.

Comme conséquence de ce principe l'art. 37 du code pénal dispose que, dans tous les cas où les tribunaux de répression soumettait les Grecs à la surveillance de la police, les étrangers sont expulsés du territoire par l'autorité administrative.

Bien qu'en principe général le droit de répression ne puisse s'exercer qu'à raison d'actes commis sur le territoire hellénique, l'art. 2 du code d'instruction criminelle consacre une extension à cette règle à l'égard des étrangers qui peuvent être poursuivis, jugés et punis en Grèce: 1° pour crimes et délits commis à l'étranger contre un Grec, 2° pour crimes de haute trahison contre l'état, pour fabrication de fausse monnaie nationale, ayant cours en Grèce, pour contrefaçon de sceau de l'état, ou complicité à ces actes. Mais leur punition présuppose leur extradition ou leur arrestation dans le pays.

Les étrangers ne sont livrés à un gouvernement étranger pour crimes et délits commis à l'étranger, que s'il y'a une loi spéciale ou un traité à cet égard.

2°. Quant aux droits politiques:

Comme on ne saurait avoir deux patries, on ne peut être citoyen de deux états; par conséquent l'étranger ne peut exercer en Gréce les droits qui présupposent la qualité de citoyen. Il ne peut donc être membre de la chambre des députés (art. 70 de la constitution), des conseils provinciaux (art. 5 de la loi du $\frac{18}{30}$ décembre 1836 sur les conseils provinciaux), ou municipaux (art. 13 de la loi du 27 décembre 1833 des communes), ni se présenter aux assemblées électorales en qualité d'électeur. (art. 4 de la loi du 19 novembre 1864 sur l'élection des députés), ni d'éligible (art. 7 de la constitution et même art. 4 de la loi ci-dessus).

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[1] Suisse, 12 juillet 1828; Bolivie, 9 decembre 1834; Porte, 25 mars 1838; Mexique, 9 mars 1839; Venezuela, 25 mars 1843; Nouvelle Grenade, 28 octobre 1844.

Ils ne peuvent être nommés aux fonctions publiques (art. 3 de la constitution) ni exercer la profession d'avocat que la loi hellénique y assimile (art. 142 de la loi sur l'organisation des tribunaux et du notariat), ni celle de juré.

Aux termes de l'art. 112 du code de procédure civile, l'étranger ne peut être nommé arbitre.

Quand il s'agit de constater un fait on ne saurait choisir ses témoins; ils sont donnés par les circonstances de temps et de lieu, et tout témoin présent est nécessaire et capable, à moins qu'il ne soit sujet à quelque incapacité naturelle. Les étrangers sont donc admis à déposer comme témoins devant la justice. Il en est de même des témoins des actes de l'état civil. Ici aussi il s'agit de constater un fait: la naissance, le mariage ou le décès d'un individu. Toute personne qui a assisté à ces faits est admise à les constater.

Mais l'étranger ne saurait servir de témoin instrumentaire dans un acte authentique, contrat ou testament public. Ici, en effet, il s'agit moins de rechercher des preuves que d'en créer (art. 179 de la loi sur l'organisation des tribunaux et du notariat). Les démoins participent ici à la confiance de l'acte, et cette participation est un motif d'exclusion contre l'étranger qui ne peut remplir de fonctions publiques.

3°. En droit privé:

Nous considérerons l'étranger dans cette partie de notre travail sur deux points de vue: 1°, sous celui de statut personnel; 2°, sous celui de statut réel.

§ 1°. *Statut personnel.*

La loi personnelle s'empare de l'homme à sa naissance pour ne l'abandonner qu'à sa mort. Elle lui donne un état, qui le suit en quelque lieu qu'il se trouve.

Ce principe est expressément consacré par l'art. 4 du code civil de la Grèce, aux termes duquel le mariage, les rapports entre ascendants et déscendants, la tutelle et la curatelle sont réglés quant aux Hellènes, même résidant à l'étranger, par les lois helléniques, et quaint à l'étranger, par les lois de son pays.

D'après la première partie de cet article la capacité de l'étranger pour l'acquisition de droits ou pour l'exercice d'actes légaux en général, est jugée conformément à la loi de son pays, et en cela la loi hellénique a confirmé le principe généralement admis par les législations des autres états de l'Europe, que l'état et la capacité des personnes sont régis par les lois de leur patrie. Mais le dernier § du 2me al. du même article consacre une exception au principe admis en faveur des étrangers. Dans l'intérêt des citoyens Hellènes, les étrangers qui, d'après les lois helléniques auraient la capacité nécessaire pour contracter une obligation, sont reconnus avoir la capacité nécessaire à la validité des contrats passés entre eux et les Hellènes en Grèce, bien que la loi de leur pays leur refuse cette capacité.

§ 2°. *Statut réel.*

Les immeubles font partie du territoire de l'état, et sont par conséquent régis par la loi hellénique. Les étrangers peuvent en devenir propriétaires même sans resider en Grèce, mais ils ne peuvent les acquérir ou en disposer que conformément aux lois helléniques. C'est la disposition formelle de l'art. 5 du code civil. "La possession, la propriété et les droits réels sur des meubles ou des immeubles sitnés en Grèce sont reglée par les lois helléniques. La succession testamentaire ou ab intestat est régie par les lois du pays du défunt, à moins qu'il ne s'agisse d'immeubles situes en Grèce, lesquels sont, à cet égard, régis par la loi hellénique."

Ainsi l'étranger est soumis à la loi hellénique pour tout ce qui concerne la distinction des biens en meubles et immeubles, la saisie immobilière, les hypothèques, la prescription acquisitive des immeubles ou celle extinctive des actions immobilières.

La succession ab intestat d'un étranger qui se compose d'immeubles situés en Grèce, sera également réglée, pour ce qui concerne ces immeubles, par la loi hellénique d'après l'art. 5 du code civil.

Du reste, aux termes de l'article précité, les effets de la possession, de la propriété, les privilèges et des voies d'exécution sont régis par la loi hellénique même quant aux meubles.

Enfin un étranger ne peut être propriétaire d'un navire hellénique pour plus de la moitié (art. 4 de la loi du $\frac{1}{27}$ novembre 1836, de la navigation commerciale).

Droits privés de l'étranger.

Aux termes de l'art. 15 du code civil, l'étranger qui voudra se faire naturaliser, doit déclarer sa volonté à la municipalité du lieu où il veut établir son domicile, et habiter en Grèce pendant deux ans, s'il est Grec d'origine, et pendant trois ans, s'il appartient à toute autre nationalitée. Passé ce délai et après qu'il aura été constaté que

l'étranger ne s'est point rendu coupable de crime ou de l'un des délits prévus par l'art. 22 du code pénal, il prétera par devant le Nomarque le serment de sujet Hellène.

L'étranger qui aura rendu des services importants à l'état, qui aura introduit dans le pays des inventions ou une industrie utiles, ou qui se distinguerait par des talents extraordinaires peut, dès qu'il aura fixé son domicile en Grèce, être naturalisé par une loi.

Pendant tout le temps qu'il sera nécessaire à l'étranger de resider en Grèce pour la naturalisation, il pourra être admis par le roi à la jouissance des droits civils, et dans ce cas il sera régi pour tous ses rapports légaux par les lois helléniques (art. 16 du code civil).

Les étrangers peuvent contracter mariage avec des Grecs, soit en pays étranger soit en Grèce, en se conformant quant à la capacité aux lois de leurs pays, et quant aux formalités soit à celles consacrées pay la loi hellénique, soit à celles usitées dans le pays ou le mariage est contracté (art. 4 et 7 du code civil).

Les mariages mixtes avec des personnes appartenant à une autre communion religieuse sont reconnus valables par la loi du $\frac{1}{27}$ octobre 1861, sur les mariages mixtes.

L'étranger ne peut être appelé à la tutelle de mineurs Hellènes, ni faire partie d'un conseil de famille les concernant (art. 30 et 49, § 6 de la loi sur la minorité, la tutelle, etc.) Mais il peute être tuteur de ses parents mineurs étrangers comme lui. Peu importe que la loi hellénique considère l'office de la tutelle comme une espèce de charge publique, réservée aux Hellènes seuls. Ce n'est pas la loi hellénique qui défère la tutelle du mineur et qui la régit, comme elle régit tous les autres droits personnels et de famille.

Un étranger peut consolider par l'usucapion une acquisition d'immeuble. C'est un mode d'acquérir qui est permis à tout possesseur de bonne foi.

L'étranger peut stipuler à son profit hypothèque surdes immeubles d'un Grec et en consentir une sur les siens au profit de ses créanciers.

Tout jugement émané d'un tribunal hellénique au profit d'un étranger lui confère le droit d'hypothèque judiciaire sur les biens de son débiteur situés en Grèce. Mais le jugement émanant d'un tribunal étranger ne confère ce droit qu'après avoir été declaré exécutoire par le tribunal hellénique compétent.

Le mariage contracté entre une étrangère et un Grec donne à la femme un titre d'hypothèque légale pour garantie de sa dot qu'elle peut inscrire sur les immeubles de son mari.

La femme grecque qui épouse un étranger a le même droit sur les immeubles de cet étranger situés en Grèce. Quant à ceux situés à l'étranger, les droits de la femme sont réglés par la loi du pays de son mari.

Un étranger ne peut être nommé captaine ou officier d'un navire hellénique.

Les trois quarts de l'équipage d'un navire hellénique doivent être pris parmis les Grecs, (art. 5 de la loi du $\frac{1}{24}$ novembre 1836, de la navigation commerciale).

Les matelots enrôlés en vertu de l'inscription maritime doivent être des sujets grecs (loi d'inscription maritime du 24 octobre 1856).

Aux termes de l'artiele 220 du code de procédure civile, et de l'art. 2 de la loi sur le timbre, de 1867, les droits d'indigenee sont accordés au plaideur qui, en vertu du certificat du démarque de son domieile, constate un état d'indigence. Lés étrangers ne sont point admis à jouir de ce droit, qui est considéré avoir été introduit par la loi hellénique en faveur des Grees seulement, (circulaire du ministère de la justice du 8 juin 1837).

Tout étranger peut être poursuivi devant tout tribunal hellénique sans distinction pour des obligations contractées en Grèce ou à l'étranger envers un Hellène (art. 28 du code de procedure civile). Et *vice-versâ* l'Hellène peut être poursuivi devant les, tribunaux helléniques pour les obligations contractés par lui en pays étranger envers un Hellène ou en étranger.

S'il n'y à point de stipulation contraire dans les traités, l'étranger demandeur quis intente une action contre un Helléne doit, aux termes des art. 78 et 79 du code de procédure civile, fournir, s'il en est requis, caution pour les frais du procès et le dommages-intérêts. Cette obligation n'existe point dans les affaires de commerce, ou lorsque l'étranger possède en Grèce des immeubles suffisants, ou que le defendeur reconnait une partie de la demande suffisante pour assurer le paiement des frais et des dommages-intérêts.

Tandis que le régnicole n'est soumis à la contrainte par corps que pour dettes commerciales, et pour les dettes civiles, exceptionnellement en certaines circonstances de suspicion légitime, cette mesure peut être prise contre l'étranger débiteur soit comme mesure conservatoire, soit pour l'exécution d'un jugement même pour dettes civiles en général. Bien entendu qu'elle doit être invoquée par la partie et prononcée expressément par le juge (code de procédure civile, art. 999, § 1 et 1000).

La contrainte par corps n'est point prononcée dans les affaires civiles contre l'étranger qui possède en Grèce des immeubles suffisants pour assurer le paiement ou qui donne caution.

La contrainte par corps dont le but est de forcer le debiteur au paiement peute être

évitée par le régnicole honnête mais malheureux, qui, faisant preuve de bonne volonté, et ne pouvant faire plus, abandonne tout son actif à ses créanciers, en recourant au bénéfice de compétence ou de la cession de biens. Cette mesure est refusée à l'étranger parce qu'il n'est pas possible d'en contrôler la fidélité. C'est la disposition formelle des art. 688 du code de procédure civile, et 575 du code de commerce en viguer en Grèce.

(Signed)

G. A. RHALLY,
Avocat.

HANSE TOWNS.

HAMBURG, *June* 26, 1868.

MY LORD: By your lordship's dispatch of the 16th instant I am directed to report the disabilities to which aliens residing in the Hanse towns are subjected by the local laws. I have accordingly the honor to state as follows:

The laws of Lubeck, Bremen, and Hamburg prohibit aliens from exercising the ordinary rights of citizenship except as undermentioned. They cannot hold any office under the State, nor can they acquire lands or houses in their own names within the territories of the state. Those privileges are reserved to citizens of the state, and to the subjects of the other states of the North German Confederation, who are on the same footing as Hanseatic citizens. But a foreigner can easily purchase land in the name of a citizen as his trustee, and this is not infrequently done.

At Lubeck and at Bremen aliens are still restricted from carrying on trades unless they have first acquired the rights of citizenship. The Lubeck law of the 20th of November, 1866, and the Bremen law of 15th February, 1861, had for their object the abolition of guilds, and facilitated the admission of foreigners as citizens at less expense than heretofore. But the condition of citizenship was not removed by those laws.

At Hamburg, however, aliens are no longer under any disabilities in respect of the exercise of trades. A law issued on the 7th of November, 1864, declares that trades and industrial occupations may be carried on by foreigners not subjects of the state; and it also reduces the cost of obtaining citizenship by those aliens who desire it. Another law, dated the 30th of December, 1867, abolished the exclusive privilege of entering goods in transit, formerly reserved to Hamburg citizens. The alien merchant is, therefore, in as favorable a position as the citizen merchant in any line of business which he may think proper to enter.

There are residing at Hamburg a considerable number of persons who claim the rights of British subjects on account of their birth or descent, but who are Hamburg subjects by having acquired citizenship or by being the children of citizens, or by having been born within the territory of the state. Such persons assert a double nationality, and appear in the character of a British subject or of a Hamburg citizen, as it suits their purpose. Ought they not rather to lose their British nationality so long as they are the voluntary citizens of a foreign state?

I have, &c.,

JOHN WARD.

The Right Hon. Lord STANLEY,
&c., &c., &c.

ITALY.

FLORENCE, *December* 19, 1868.

MY LORD: With reference to Lord Stanley's dispatch of the 16th of June last, I have the honor to inclose herewith to your lordship a translation of a report which has been drawn up by Signor Corsi, legal adviser to this mission, relative to the disabilities to which aliens residing in Italy are subjected by Italian law.

I have, &c.,

A. PAGET.

The Right Honorable The Earl of CLARENDON, K. G.

[Translation.]

Memorandum on the laws which regulate the rights of aliens in Italy.

The civil capacity of aliens in Italy in regard to their private rights is as follows:

As a general rule "the alien is admitted to the enjoyment of all civil rights accorded to the citizen," (art. 3 of the Civil Code.)

If a citizen has lost his nationality before the birth of a child, the latter is considered a citizen if born in the kingdom and resident there; but he can, within a year of the attainment of his majority, determined by the laws of the kingdom, select the quality of an alien, by making a declaration to that effect before the civil authorities of his domicile, or, if he is abroad, before the king's diplomatic or consular agents, (art. 5 of the Civil Code.)

"A child born abroad of a father who has lost his nationality before his birth is reputed an alien.

"He can, however, select the quality of a citizen provided he makes a declaration to that effect in accordance with the foregoing dispositions, and provided he fixes his domicile in the kingdom within one year of such declaration.

"If, however, he has accepted state employ in the kingdom, or serves in the army or navy, or has otherwise complied with the terms of the conscription law, without invoking exemption therefrom on the plea of being an alien, he is considered a citizen without further formalities, (art. 6 of the Civil Code.)

"When the father is unknown, the child, born of a mother who is a native, is a citizen."

"If the mother has lost her nationality before the birth of her child, the dispositions of the two preceding articles apply."

If the mother be likewise unknown, the child born in the kingdom is a citizen, (art. 7 of Civil Code.)

"A child, born in the kingdom, of an alien father who has been domiciled there for ten years uninterruptedly is considered a citizen. Residence on account of commercial affairs does not constitute domicile."

"He can, however, select the quality of alien, but the dispositions of the two first paragraphs of art. 6 are applicable to this case, (art. 7 of Civil Code.)

"An alien woman married to a citizen acquires citizenship, and retains it as a widow, (art. 9 of Civil Code.)

"An alien can also obtain citizenship by naturalization granted by law or royal decree."

"The royal decree is not effective unless registered by the civil authority of the place where the alien intends to fix or has fixed his domicile, and unless he swears before the said authority to be faithful to the king and to observe the statutes and the laws of the kingdom."

"The wife and minor children of an alien who has obtained citizenship become citizens, provided they have a fixed residence in the kingdom, but the children can select the quality of aliens by making the declaration mentioned in art. 5, (art. 10, Civil Code.)

Citizenship is lost:

1st. By a person who renounces it by a declaration to that effect before the civil authority of his domicile, and transfers his residence to a foreign country.

2d. By a person who, without the permission of his government, has accepted employment from a foreign government, or has entered the military service of a foreign power.

"The wife and minor children of a person who has lost his nationality become aliens, unless they continue to reside in the kingdom.

"They can nevertheless regain their nationality in the cases and manner described in the first paragraph of art. 14 as regards the wife, in the first two paragraphs of art. 6 as regards the children, (art. 11, Civil Code.)

"The loss of nationality, as described in the preceding article, does not imply exemption from the obligations of military service, nor from the penalties inflicted on those who bear arms against their native country, (art. 12, Civil Code.)

"The citizen who has lost his nationality from any of the causes mentioned in art. 11, regains it, provided—

"1. That he returns to the kingdom with a special permission from the government.

"2. That he renounces his foreign nationality, the employment or military service taken abroad.

"3. That he declares before the civil authorities that he intends fixing, and really does fix, his domicile in the kingdom within the space of one year, (art. 13, Civil Code.)

"A woman who marries an alien becomes an alien whenever by the fact of marriage she acquires the nationality of her husband.

"If left a widow, she regains her nationality if she resides in the kingdom, or if she

returns there and declares in both cases before the civil authorities that she wishes to fix her domicile there, (art 14, Civil Code.)

"The acquisition or resumption of nationality in the preceding cases only takes effect from the day succeeding that on which the prescribed conditions and formalities are fulfilled, (art. 15, Civil Code.)"

The law of the 15th November, 1865, for the regulation of the civil status, ordains:

Art. 44. "In the registers of citizenship are inscribed:

1st. "The declarations of a reputed alien who desires Italian nationality.

2d. "The declaration of a reputed Italian subject who selects the quality of an alien.

3d. "Declarations renouncing Italian nationality.

4th. "Declarations relative to fixing, or the intention of fixing, domicile in the kingdom.

5th. "Declarations relative to the transfer of domicile from one commune of the kingdom to another.

Art. 45. "In the said registers are transcribed the royal decrees conferring nationality.

Art. 46. "The declarations mentioned in Nos. 1, 2, and 3 of art. 44, are received by the civil authorities of the domicile of the person making them, if he resides in the kingdom, and by the diplomatic and consular agents if abroad.

"The said agents transmit, within three months after the date given them, copy of the declarations they have received to the ministry of foreign affairs, whence they are forwarded to the civil authorities of the last domicile of the person making the declaration; or, in default of that, of the last known domicile of the father.

Art. 47. "The declarations mentioned in No. 4 of art. 44 must be made before the civil authority of the place in which the person making the declaration resides, or intends residing.

Art. 48. "The declarations mentioned in Nos. 1 and 2 of art. 44 must explain the circumstances of their origin.

"The person making the declaration must further prove, by the production of his certificate of birth, or of a notarial document, that he has attained majority according to the laws of the kingdom.

Art. 49. "The declaration contained in No. 4 of art. 44 must explain the motive of its origin and the object in view.

"When a declaration is made by a widow in accordance with art. 14 of the Civil Code, she must prove her widowhood by producing a certificate of the death of her husband.

Art. 50. "Before transcribing the decree conferring nationality, the civil authority must demand from the alien an oath, according to the special rites of the religion he professes, that he will *be faithful to the king and will observe the statutes and laws of the realm.*

"The fulfillment of this formality must appear on the register.

Art. 51. "If the civil authority is requested to register said decree after a lapse of more than three months from its date, he must refuse to accept the oath and to register the decree."

With reference to the influence of foreign laws on personal capacity and family relations, art. 6 of the law of the 25th June, 1865, ordains: "The personal status and capacity and family relations are regulated by the laws of the country to which the persons belong."

As to matrimony, however, attention must be paid to the following articles of the Civil Code:

Art. 100. "A marriage celebrated in a foreign country between subjects, or between a subject and an alien, is valid, provided it be celebrated according to the established custom of that country, and provided the subject has not contravened the dispositions contained in section 2 of chapter I on this matter.

"The marriage must be notified within the realm in accordance with arts. 70 and 71. If the subject has not residence in the realm, the notification must be made in the commune of his last domicile.

Art. 101. "A subject who has contracted marriage abroad must, within three months after his return to his native country, cause his marriage to be registered by the civil authority of the commune in which he takes up his residence, under pain of a fine to the extent of one hundred lire, (francs.)

Art. 102. "The capacity of an alien to contract marriage is determined by the laws of his country.

"But an alien is subject to the impediments contained in section 2 of chapter I, on this matter.

Art. 103. "An alien desirous of contracting marriage in the realm must present to the civil authority a declaration from the competent authorities of his country, proving that according to the laws of his country there is no obstacle to the intended marriage.

"If the alien resides in the realm he must further make the notification required by the dispositions of this code."

The influence of foreign laws of property is explained in art. 7 of the said law of 25th of June, 1865, as follows:

"Personal property is subject to the law of the proprietor's country, unless the law of the country where it is situated disposes otherwise.

"Real property is subject to the laws of the place where it is situated.

Article 9 of the same law refers as follows to the form of deeds:

The extrinsic form of deeds executed between living persons, and of wills, is determined by the law of the place where they are made. The disposers or contractors may, however, adopt the forms of their own national laws, provided the latter are common to all the parties.

"The substance and effects of testamentary donations and dispositions are considered as being regulated by the laws of the disposer's country. The substance and effects of obligations are considered as being regulated by the law of the place in which the deeds were drawn, and if the contracting aliens belong to the same country, by their national laws. In every case the proof of a contrary desire holds good."

Alien successions are regulated by art. 8 of this law, as follows:

"Legitimate and testamentary successions, however, whether with reference to the order of succession, or with regard to succession rights, and the intrinsic validity of the dispositions, are regulated by the law of the person deceased, whatever may be the nature of the property, and without regard to the country of its situation."

For the forms of procedure, and the influence of foreign sentences in the realm, art. 10 in the same law ordains:

"The competency and the forms of procedure are regulated by the law of the place where sentence is given.

"The proofs of obligation are determined by the laws of the place where the deed was drawn.

"The sentences pronounced by foreign tribunals in civil matters will be executed in the realm, if declared capable of execution according to the forms established by the code of civil procedure, and if not opposed to international stipulations.

"The manner of execution of deeds and sentences is regulated by the law of the place where execution ensues."

A general clause, placed at the end of this law, (art. 12,) prevents a too extensive application of its various dispositions from clashing with the laws in force in the realm, and says:

"Notwithstanding the stipulations of the preceding articles, the deeds and sentences of a foreign country, as well as private dispositions and agreements, can in no case be derogatory of the prohibitive laws of the realm which concern persons, property, or deeds, nor of the laws which in any way regard public order and morality."

The mode of citing aliens before the tribunals is traced in the following articles of the Code of Procedure:

"ART. 105. An alien who has no domicile in the realm may be cited before the judicial authority of the realm even when absent from it—

"1st. In a question regarding real or personal property situated in the realm.

"2d. In a question of obligations arising out of contracts or deeds executed or to be executed in the realm.

"3d. In every other case in which there is reciprocity.

"ART. 106. Besides the cases indicated in the preceding articles an alien can be cited before the judicial authority for obligations contracted abroad—

"1st. If he has his residence in the realm, though not actually there.

"2d. If he happens to be in the realm, though having no residence there, provided he be personally cited.

"ART. 107. When an alien has no residence, dwelling, or chosen domicile in the realm, and no place has been fixed on for the execution of the contract, *personal or real action as regards personal property*, (*l'azoine personales d'reale su beni mobili*,) takes place before the judicial authority of the place in which the plaintiff has his residence or domicile."

With reference to commercial relations, the stipulation of art. 3 of the civil code above cited, which concedes to aliens the same rights as to subjects, independently of political treaties, is to be observed.

Anonymous foreign commercial companies carrying on business in the realm must be authorized by the government like Italian ones.

A law of the 20th October, 1860, allows French anonymous companies recognized in France to operate in Italy, and to have legal standing without any special authorization.

Two diplomatic conventions, concluded on December 5, 1867, with England, and on December 8, 1867, with Russia, repeat similar dispositions as regards English and Russian commercial companies, but in the Russian convention insurance companies are excluded.

A French decree dated in September, 1860, and the above-mentioned conventions, grant full reciprocity to Italian companies in those states.

These, and in general all other foreign commercial societies, (accomandite collective,) must publish their charter in the chancery of the tribunal of commerce of the district in which they choose a domicile.

With reference to questions of criminal law the Sardinian code has hitherto been applied in all parts of the realm except Tuscany.

The above-mentioned law of the 25th June, 1865, in art. 11, contains the following general dispositions: Criminal laws, and those of police and public security, are binding on all persons who may be within the territory of the realm.

The criminal code contains the following dispositions:

ART. 5th. "The native of the kingdom who commits on foreign territory a crime against the security of the realm, or who forges the seal, the moneys, bank-notes, obligations of the state, or documents of public credit equivalent to money, is to be tried and punished in the realm according to the provisions of the present law.

ART. 6th. "The native of the kingdom who commits on foreign territory a crime against another native of the kingdom, or against a foreigner, when he returns to the realm, is to be judged and punished according to the penalties established by the present law, which, however, may, according to circumstances, be diminished by one degree.

"The same rule will be applied to the native of the kingdom who commits on foreign territory a crime against another native of the kingdom, provided the injured party commences an action against him.

"The same rule will also apply if the crime be committed on foreign territory against a foreigner, provided that in the country to which the foreigner belongs the same treatment is extended to inhabitants of the kingdom.

ART. 7th. "The foreigner who on foreign territory commits a crime against the security of the state, or forges the seal, the moneys, bank-notes, obligations of the state, or documents of public credit equivalent to money, and who is arrested within the realm, or is given up by foreign governments, is to be judged and punished according to the provisions of the present law.

ART. 8th. "The foreigner who commits on foreign territory, either against a native of the realm or against another foreigner, any of the crimes indicated in articles 596–600 exclusively, if arrested in the realm or given up by other governments, is to be judged and punished according to article 6, provided the crime shall have been committed within half a miriametre of the frontiers of the realm, or, in case the crime has been committed at a greater distance from the frontiers, when the culprit brings into the realms moneys or effects which he has stolen.

ART. 9. "Besides the cases mentioned in the preceding article, the foreigner who on foreign territory commits a crime against a native of the realm and then enters the royal states is to be arrested, and the authorization of the king's government having first been obtained, an offer of his surrender is to be made to the government within whose jurisdiction the crime has been committed, in order that he may be tried there. But if that government should fail to receive the culprit, he is to be judged and punished in the royal states according to article 6.

"The same rule applies to crimes committed by a foreigner against an inhabitant of the realm in a foreign country, when under similar circumstances an inhabitant of the realm would be punished in the country to which the foreigner belongs, except in case of civil actions."

ART. 10. "Articles 6, 8, and 9 are not to be applied when the culprit shall have been tried and sentenced in the country where the crime has been committed, and in case of his having been condemned, shall have there gone through the term of punishment.

ART. 11. "No culprit can be surrendered to any state without the order of the king's government."

In the Tuscan provinces, where, as has been already said, there still exists the penal code promulgated by the Grand Ducal government in 1853, the regulations respecting foroigners are as follows:

ART. 3. "1. Whoever commits a crime on Tuscan territory, whether he be a Tuscan subject or not, is punishable according to the provisions of the present law."

2. "However, soldiers in the service of the state do not come under the above head, insomuch as crimes committed by them are punishable according to the military laws."

ART. 4. "A Tuscan subject is punishable according to the present law also for crimes committed out of the Tuscan territory—

"*(a.)* Against another Tuscan;

"*(b.)* Against the internal or external security of the state;

"*(c.)* Forgery of moneys or documents of public credit having legal or commercial circulation in Tuscany;

"*(d.)* Forgery of the seal of a public authority or of a public office of the Grand Duchy, or of the instruments used in making it.

"The same rule applies to crimes committed by Tuscans out of Tuscany against a foreigner; but in such cases—

"*(a.)* For the punishment of death is substituted imprisonment ('ergastolo');

"*(b.)* For imprisonment ('ergastolo') is substituted the penitentiary ('Casa di Forga') for twenty years;

"*(c.)* The penitentiary can be reduced within the legal limits; and

"*(d.)* If the crime is punishable with less than the penitentiary, not only may the punishment be diminished, as laid down under letter *c*, but moreover the person injured must bring the action against the culprit."

ART. 5. "When arrested in Tuscany, or given up by other governments, a foreigner is liable to punishment under the present law, when beyond the limits of the Tuscan territory he has been guilty of a crime—

"*(a.)* Against the internal security of the state;

"*(b.)* Forgery of moneys or of public papers of credit in Tuscany; or

"*(c.)* Forgery of seals of a public authority, or of a public office of the Grand Duchy, or of the instruments for making them."

"The same rule applies to crimes committed by foreigners out of Tuscany against a Tuscan; but in such cases are applied the limitations laid down in sec. 2 of the preceding article."

ART. 6. "In the cases foreseen in sec. 2 of art. 4, and sec. 2 of art. 5, acts are not to be punishable which, although punishable in Tuscany, are not liable to punishment in the country where they are committed."

ART. 7. "If the Tuscan subject, as mentioned in art. 4, or the foreigner as mentioned in art. 5, has, beyond the Tuscan frontiers, suffered the punishment inflicted by law on his crime, no criminal proceedings can be taken against him in the Grand Duchy.

"But if, condemned out of Tuscany, he has not gone through his punishment, or has only done so in part, he is liable to be tried again in Tuscany, but at his trial the amount of punishment he may already have gone through will be taken into consideration.

ART. 8. "The rules laid down in articles 4 and 5 are to be observed in every case where there are no others laid down by special public conventions between Tuscany and other states."

ART. 9. "No Tuscan subject can be given up to another state for any crime whatever, whether committed in Tuscany or elsewhere."

As regards criminal proceedings, the following are the provisions of the various articles of the code applicable to foreigners:

ART. 34. "For crimes and offenses punishable according to articles 5, 6, 7, 8, and 9 of the Criminal Code in the kingdom, the place of domicile or of arrest, or of surrender of the accused, determines the competency of the court, and a preventive arrest may be made." ("E si fa luogo a la prevenzione.")

"However, the court of appeal may, on the demand of the public ministry or of the other parties, send the affair before the court or tribunal nearest to the place where the crime or offense has been commited.

ART. 35. "The court or tribanal competent to take cognizance of the crimes mentioned in the preceding article may make use of acts made abroad.

"These acts may, moreover, serve to determine the indemnity due to the injured party in the case of crimes committed abroad which are not punishable in the kingdom." (C. S. 33.)

ART. 36. "Whenever a judge receives notice of an action or a denunciation about a crime committed abroad, which can be adjudicated on in the kingdom, he must give notice of it to the 'procureur du roi,' who will call upon the 'procureur général' under whom he is placed." (C. S. 34.)

ART. 853. "When in criminal proceedings it is necessary to proceed to the examination of witnesses or to the drawing up of deeds with foreign judicial authorities, or to demand the arrest and extradition of a criminal who may be in a foreign country, the person drawing up the accusation must inform the court ('sezione d'accusa') to which he belongs, and the court, where necessary, will make the demand in the customary form, and will forward it through the public ministry, with the necessary documents, to the ministry of grace and justice, in order that it may insure the carrying out thereof.

"The extradition of an accused person may also be demanded directly by the government of the King."

"When the extradition of an accused person can be obtained from a foreign government, only on sworn testimony, the judge who hears the case may examine on oath the witnesses whose depositions are required; of these depositions a separate volume is to be made, which will serve for the demand of extradition. At the trial, however, these witnesses must again be sworn in the manner laid down by the law." (C. S., 832.)

ART. 854. "When in criminal matters it is necessary to draw up acts of accusation at the request of foreign judicial authorities, it shall be done by the court of appeal in the 'sezione d'accusa,' and the judge appointed by it.

"In such case witnesses may, if required, be examined on oath." (C. S., 833.)

ART. 855. "No alteration is made in the rules in force for communications between the authorities of the kingdom and those of foreign governments on matters concern-

ing criminal jurisprudence, and the special conventions now in force are to be observed." (C. S., 834.)

"In the cases in which, according to the provisions of the criminal code, the tribunals of the state are competent to take cognizance of crimes committed by subjects in foreign countries, when they return home, the act of accusation and the documents necessary to prove and maintain the guilt of the accused may be drawn up; but he cannot be summoned or arrested until he returns into the country."

In the international treaties there are special dispositions respecting the enjoyment of civil rights accorded to the subjects of each contracting state separately; but, if exception is made of the stipulations exempting foreigners from any forced loans which may be raised in the kingdom, it may be said that they have been placed there more to satisfy the contracting powers than because they were necessary, for the provisions of law, as above explained, are framed on the most liberal principles of international law.

Such are, both in matters of private and of criminal law, the rules affecting foreigners in Italy.

AVO. CORSI.

FLORENCE, *December* 10, 1868.

NETHERLANDS.

THE HAGUE, *July* 10, 1868.

MY LORD: On receipt of your lordship's dispatch of June 16, I lost no time in soliciting of this government full information respecting the disabilities, civil and political, under which aliens resident in the Netherlands labor.

M. Roert Van Limburg in his reply, copy of which I have now the honor to inclose, makes frequent reference to the "code civil" and to the "code de procedure civil" in force in this kingdom. Of these works no translations from the Dutch exist, a want that, however, is the less felt as the whole body of statute law of this country is based on the "Code Napoléon," promulgated in 1810.

Of the recent Dutch legislation on this subject, to which M. Roert Van Limburg calls attention, I have appended translations of those laws and articles the bearing of which, upon the condition of an alien in Holland, is not sufficiently explained in the text of his excellency's dispatch.

In the event of the members of the "naturalization commission" requiring further information on the subject, I would venture to refer them to M. de St. Joseph's "Concordances entre les Codes Civils Étrangers et le Code Napoléon," a work published at Paris in 1856, and furnished with an excellent index, showing at a glance the divergencies of legislation in different countries on any given point.

I have, &c.,

E. A. J. HARRIS.

The Lord STANLEY, *M. P.*

LA HAYE, *le 7 juillet* 1868.

MONSIEUR MINISTRE: En réponse à votre office de 20 juin dernier, par lequel vous avez exprimé le désir d'être renseigné au sujet des incapacités (disabilities) dont la loi frappe les étrangers résidant dans les Pays-Bas, j'ai l'honneur de porter à votre connaissance que ces incapacités sont de deux espèces, et concernent, les unes l'exercice des droits politiques, les autres la jouissance des droits civils.

Quant aux droits politiques, les étrangers n'en ont pas la jouissance. Ils ne peuvent être nommés à des fonctions publiques qu'exceptionnellement conformément aux dispositions de la loi du 4 juin 1858. Ils peuvent même lorsqu'ils résident dans le royaume, sans avoir été assimilés aux Néerlandais en vertu de l'article 8 du code civil, être extradés (voyez l'art. 19 de la loi du 13 août 1849). Enfin la loi du 14 mars 1819 établit une distinction entre les Néerlandais et les étrangers par rapport à la déliverance des lettres de mer. Toutefois l'étranger qui a habité le pays peudant un an, est, aux termes de l'art. III. 2°, assimilé à cet égard aux Néerlandais.

En ce qui concerne l'exercice des droits civils, les étrangers sont, au contraire, assimilés en général aux nationaux. L'art. 9 de la loi, contenant des dispositions générales de législation, déclare le droit civil du royaume applicable aux étrangers comme aux Néerlandais, pour autant que la loi n'établit pas expressément le contraire. Cette restriction s'appliquant aux étrangers en général rend toutefois nécessaire de distinguer entre les exceptions qui s'appliquent à *tous* les étrangers, par conséquent aussi à ceux résidant dans le royaume, et celles qui ne sont applicables qu'aux étrangers ne résidant pas, ou n'ayant pas de domicile connu dans les Pays-Bas.

À la première catégorie de oes exceptions appartiennent celles d'après lesquelles un

étranger n'est admis à succéder soit par le testament soit ab intestat, ni à acquérir par voie de donation que pour autant que les mêmes avantages sont assurés aux Néerlandais par la législation du pays de cet étranger (articles 884, 957, du code civil), et en outre celles résultant de l'art. 152 du code de procédure civile, d'après lequel tous étrangers, demandeurs principaux ou intervenants, sont tenus, si le défendeur le requiert, avant toute exception, de fournir caution de payer les frais et dommages-intérêts auxquels ils pourraient être condamnés, et de l'art. 155 du même code, lequel exclut du bénéfice du prodéo les étrangers indigents, à moins qu'une convention spéciale ne leur assure ce bénéfice.

Les exceptions de la seconde catégorie résultent des art. 127 (relatif aux citations,) 585 10° (relatif à la contrainte par corps) 710 1° (qui exclut les étrangers du bénéfice de la cession de biens), et 768 à 770 (relatifs à l'emprisonnement pour dettes et à la saisie des biens), du code de procédure civile. Aucune de ces dernières exceptions ne s'applique toutefois aux étrangers assimilés aux Néerlandais conformément à l'art. 8 du code civile, à l'égard desquels la règle posée par l'art. 9 précité de la loi contenant des dispositions générales de législation est en tous points applicable en ce qui concerne l'exercice des droits civils.

Espérant, monsieur le ministre, que les renseignements qui précèdent pourront suffire au but qu'à en vue votre gouvernement, je saisis cette occasion pour vous renouveler l'assurance de ma haute considération.

ROEST VAN LIMBURG.

Vice-Admiral HARRIS, *&c., &c., &c.*

[Translation.]

Law of June 4, 1858.

We, William III, &c., having considered article 6 of the constitution, and consulted our council of state, and deeming it desirable to determine the eligibility of aliens to government employ, whether civil or military, have decreed as follows:

ARTICLE 1.

Aliens are eligible for government employ as—

a. Consul-general, consul, or consular agent.
b. Chancelier or servant in missions, consulates-general, and consulates.
c. Chief, subordinate, teacher, or official in the government establishments for education, arts, and sciences.
d. Official in the telegraph department.
e. Official connected with steam-machinery.
f. Employé in mines.
g. Director and commissary of government entrepôts.
h. Controller and inspector of small-arms.
i. Die-sinker at the mint and government offices.
k. Engraver for any government department.

ARTICLE 2.

Aliens who have served or are serving in the army or the navy, may, if furnished with an honorable discharge, after twelve years' actual service, be appointed clerk, skipper, or gauger, in the revenue department; watcher, porter, or boom-closer in fortresses; toll-keeper, sluice-keeper, employé in military hospitals; and in the clothing, camp, equipment, commissariat, or military baking departments.

ARTICLE 3.

Aliens in civil government employ at the time of the coming into operation of this law are likewise eligible for appointment to any office mentioned in article 2.

ARTICLE 4.

Aliens appointed previous to this law's taking effect to any office or employ other than those mentioned in article 1, may retain such office or employ, but may not receive advancement in the public service unless naturalized according to law.

Given at the Loo, June 4, 1858.

(Signed) WILLIAM.

(Countersigned) J. K. VAN GOLDSTEIN.

[Translation.]

Article 19 of the law of August 13, 1849.

The enactments of this law are not applicable to aliens who, under article 8 of the "Code Civil," are assimilated to Netherlands subjects; and, with reference to this law, those aliens are considered admitted to Netherlands citizenship who are domiciled within the kingdom and married to Netherlands women, or who, having been married to Netherlands women, have by them had issue born within the Netherlands.

[Translation.]

Extracts from code of civil procedure.

No. 127. An alien may, even when not domiciled in the Netherlands, be cited before a Netherlands tribunal for crimes committed by him against a Netherlands subject either within or without the limits of the kingdom.

No. 585.—10th. Aliens not domiciled within the Netherlands are liable to imprisonment for debt for any debt contracted with a Netherlands subject.

No. 710.—1st. Aliens not domiciled within the Netherlands are excluded from participating in the advantages of cession of property.

No. 768. Aliens not domiciled within the Netherlands may, without sentence in a court of justice, be seized for debts due to a Netherlands subject on an order of the justices of the arrondissement.

No. 769. Bail (on good securities for both debt and costs) may be accepted.

No. 770. Aliens, non-domiciled, are liable to seizure for debt, if payment of a debt on application is not made in eight days.

[Translation.]

Article 8 of the civil code.

Aliens are assimilated to Netherlands subjects in the two following cases:

1st. When, in virtue of permission from the King, they have established their domicile in the kingdom, and made the communal administration acquainted with such permission.

2d. When, after having established their domicile in a commune of the kingdom, and retained it in the same commune for six years, they shall have announced to the communal administration their intention to establish themselves in the kingdom.

PORTUGAL.

LISBON, *August* 22, 1868.

MY LORD: In reply to your lordship's dispatch of the 16th of June, I have the honor to inclose copy and translation of a note dated the 8th instant, and of its inclosure, addressed to me by the minister of foreign affairs, in answer to my application to him for information as to the disabilities of aliens in this country.

In the inclosure above referred to, your lordship will find a statement of the rights, as well as of the disabilities, of aliens in Portugal.

I have, &c.,

CH. A. MURRAY.

The Right Honorable Lord STANLEY,
&c., &c., &c.

FOREIGN DEPARTMENT, LISBON, *August* 8, 1868.

MOST ILLUSTRIOUS AND EXCELLENT SIR: In addition to the note which my predecessor addressed to your excellency on the 16th of July last, I have the honor to forward to your excellency the inclosed copy of the report made by the councillor and assistant attorney-general to the Crown attached to the department of the interior, wherein the rights and powers to which foreigners are entitled in Portugal are summarily stated.

Having thus complied with the wish expressed by your excellency in your note dated the 24th of June last,

I am, &c.,

CARLOS BENTO DA SILVA.

(Copy.)

Rights and powers enjoyed by foreigners in Portugal.

1. All foreigners residing or traveling in Portugal possess the same rights and are subject to the same civil duties as Portuguese citizens, as far as regards any acts which are to be carried into effect in this country, except in such cases in which either an express law or a special treaty shall provide otherwise. (Civil Code, art. 26.)

2. The status and civil capacity of foreigners are to be regulated according to the law of their own country. (Article 27.)

3. If met with in these realms they can be sued before the Portuguese justices on account of any engagements entered into with Portuguese in a foreign country, the case of any special treaty excepted. (Arts. 28 and 30.)

4. They can be sued by other foreigners before the Portuguese justices for any engagements entered into in this country, if met with there, the aforesaid case excepted. (Arts. 29 and 30.)

5. Any judgments given in foreign courts of justice upon any civil rights between foreigners and Portuguese can be carried into execution before the Portuguese tribunals, (art. 31,) provided they are examined and confirmed in any of the tribunals of second instance of the kingdom, after hearing the parties, and in the presence of the representative of the Crown, unless there should be a treaty stipulation providing otherwise, or whenever the parties expressly consent to the execution of such judgments by a written agreement signed by them before the proper judge, namely, that of the domicile of the person against whom judgment is to be carried out, and in his absence that of the place where the property is situated. ("Reforma Judiciaria," Judicial Reform, art. 567, and respective paragraph.)

6. Foreigners can become naturalized, if they are of age, both by the law of their country and by Portuguese law, provided they are able to maintain themselves either by the work of their hands or by any other means of subsistence, and shall have resided during one year in Portuguese territory, unless they should be the descendants of Portuguese blood, and should have come for the purpose of establishing their domicile in this kingdom; because, in such a case, one year's residence is not requisite, which may also be dispensed with by the government in the case of a foreigner married to a Portuguese woman, or in the case of any one who shall have performed, or may be called to perform, any important service to the nation. (Civil Code, arts. 19 and 20.)

7. Letters of naturalization are granted by the executive power, (Constitutional Charter, art. 75, § 10,) but are only valid after being registered in the municipal chamber of the district where a foreigner shall have established his domicile. (Civil Code, art. 21.)

8. All foreigners who are naturalized are Portuguese citizens, (Constitutional Charter, art. 7, § 4,) enjoying as such all the political rights appertaining to them, such as voting at elections, &c., (art. 63 of the Constitutional Charter.) They cannot, however, be elected deputies, (art. 68, § 2,) nor succeed to the Crown, (art. 89,) nor be minister of state, (art. 106,) nor a councillor of state, (art. 108.)

Lisbon, July 29, 1868.

CONTO MONTERO.

True copy:

OLIMPIO JOAQUIM OLIVEIRA.

True copy; Department of state of foreign affairs, 8th of August, 1868.

EMILIO ACHILLES MONTEVERDE.

PRUSSIA.

BERLIN, *October* 17, 1868.

MY LORD: I have the honor to transmit herewith the translation of a note, dated the 7th instant, from Baron Thile, inclosing a report which I was instructed by your lordship, in your dispatch of June 16, to furnish for the use of the naturalization commission on the disabilities to which aliens, residing in Prussia, are subjected by Prussian law.

A translation of this report, by Mr. Harris, Lord Brabazon, and Mr. O'Connor, is likewise inclosed.

I have, &c.,

AUGUSTUS LOFTUS.

The Lord STANLEY, M. P.,
&c., &c., &c.

[Translation.]

BERLIN, *October* 7, 1868.

In compliance with the desire expressed in his excellency Lord A. Loftus's note of June 20, of this year, the undersigned has the honor to transmit herewith a summary of the principles applicable to foreigners as regards their legal status in the Prussian territory.

The undersigned avails himself, &c.

THILE.

[Translation.]

Summary of the principles applicable to aliens as regards their legal status in the Prussian territory.

According to the provisions of the general Prussian body of laws, the laws of this country are applicable to aliens living or carrying on business in Prussia in the same manner as to the Prussians themselves.

§§ 34 and 22 of the introduction to the general common law. Ministers and residents of foreign powers, as well as those employed in their service, are excepted, for whom are reserved the immunities which belong to them by international law, and by the existing conventions with different courts. (Page 36, as above cited.)

The provisions relative to the application of this principle in criminal or civil suits will be hereafter stated.

The exceptional position of the "personnel" of a legation has reference only to their exemption from the jurisdiction of the native penal and civil tribunals, and to the obligations which the laws of the country impose on aliens, not, however to the rights which aliens can generally acquire within this country. In this respect the "personnel" of the legation is in similar position to other aliens.

Aliens enjoy all the privileges of Prussian subjects in the carrying on of business duly authorized.

§ 41 of the introduction to the general body of law.

Whenever the respective foreign state has not, to the disadvantage of aliens generally, or to the subjects of this state in particular, imposed burdensome regulations. In this case retortion can occur, from which aliens cannot escape by the abandonment of their rights to natives.

§§ 43 and 44 of the introduction to the general body of law.

The right to retortion becomes especially applicable whenever, in the bankruptcy in the state to which the foreigner creditor belongs, similar privileges to those enjoyed by its own subjects are not accorded to subjects of that state. (S. 3, statute respecting bankruptcy of May 8, 1855.)

A. Whenever aliens and natives have put an attachment on the estate of their debtors, and that attachment gives in the country of the aliens an advantage to the latter.

S. 87, Part I. Title 29 of the general statute respecting tribunals.

The right of retortion must not be put into operation by the courts of the first instance without the sanction of the legally-appointed authorities.

S. 44 of the introduction of the general body of law.

I. The entry of aliens into the Prussian dominions; their residence therein or their departure therefrom is not restricted by any burdensome formalities.

§ 2 B. of the law respecting passports for the North German Confederation.

They are authorized to take up their abode without being naturalized; (§ 13 of the law respecting the acquisition and loss of the quality of a Prussian subject of the 31st of December, 1842, Law Collection of 1843, page 15;) but in this case they can be required to state the period during which they may continue in their previous relations as subjects.

§ 14. Above cited.

II. Aliens are limited in the exercise of political rights.

A. They cannot take part in the representation of the country.

§ 7 of the regulations for the formation of the 1st chamber (House of Lords) of the 12th of October, 1854, (Collection of Laws, 541,) and § 8 of the regulations respecting the selection of deputies of the 2d chamber (house of deputies) of the 30th May, 1849. (Collection of Laws, 205.)

B. With respect to the political municipal privileges, the principle prevails according to the municipal laws prevalent in different parts of the country, that—

a. In towns the acquisition of citizenship, *i. e.*, the right of participation in municipal elections, as well as of the qualifications for undertaking unpaid posts in the municipal representation, is dependent upon the qualification as a Prussian; on the other hand, aliens can, on the same presumption as natives, *i. e.* by the acquisition, for instance, of a local domicile, become municipal members without the right of citizen-

ship, and thereupon take equal part in all the affairs and duties of the municipal members, with exception of the before-mentioned rights consequent on citizenship.

In the towns of the Duchy of Holstein (Holstein municipal regulations of the 11th of February, 1854) aliens, on the same condition as natives, (independence, respectability, and settlement in the town,) are capable of acquiring the right of citizenship, provided the permission of their residence is not forbidden for police reasons, and that they have complied with the special existing regulations respecting the establishment of aliens. These regulations tend to the effect that aliens arriving in the country should not merely apparently and temporarily, but really settle down in the place. He (the alien) must not retain his own residence in another place, and must, when married, establish his household in the place, together with his wife and children, so that he (as the royal statute of the 23d September, 1796, says) can "be looked upon as our own subject."

Aliens who are unmarried and without a household establishment must, as a security that they intend to remain in the place, and before receiving the right of citizenship, deposit 200 thalers as bail, which will be returned to them only after a lapse of five years, provided they have during the interim resided in the place and followed a civil calling; otherwise it goes to the municipal fund.

Besides this, the special regulations specified by the charter of the 5th of November, 1841, (Chronological Collection of the Schleswig-Holstein Ordinances of 1841, page 243,) with respect to the settlement of aliens, must be complied with.

The right of citizenship qualifies forthwith for every kind of civil employment in the place, also for the municipal elections, the municipal offices and duties (mandate,) and compels the acceptance of the latter.

Residents in a municipality, but without the right of citizenship, are (schutznerwanth) under the especial protection of the government.

These enjoy such municipal privileges as are not exclusively attached to the right of citizenship, and are obliged to pay the municipal taxes, (and, by statute, not at a less rate.) Aliens can only become (schutznerwanth) under the especial protection of the government when they have complied with the above-mentioned special regulations respecting domicile in a place. In the Holstein country towns the same principles essentially prevail as in the towns and country towns of Schleswig.

b. Also in the country municipalities (landgemeinde) the general principle prevails, according to the municipal regulations existing in the different parts of the country, that aliens can only obtain complete municipal rights after they have first obtained the right of citizenship. In the municipality of Hanover, however, owners of property, farms, and dwelling-houses in general, can exercise the right of municipal electors, and so, also, if they are aliens, without being settled there when they have acquired the right to reside in the respective municipality, which again presupposes the acquisition of the rights of a subject.

In the municipalities of the Schleswig-Holstein Duchies, by the decree of the 22d of September of last year, (Law Collection, page 1603,) relative to the right of election, the local regulations existing in each municipality are in the bulk maintained. These local regulations rest mostly on custom.

C. Relative to participation in the provincial and district representation, the qualification of being a Prussian on the part of an owner of landed property is not required.

The royal order in council of the 28th of May, 1809, which is in force in the eight older provinces, with the exception of the Rhine Province, makes the acquisition of nolle property and manor-houses by aliens subject to a special concession from the minister of the interior, which is dependent upon taking an oath of allegiance. By royal order in council, also, of February 15, 1858, it is ordered, in accordance with the decree of March 28, 1809, that the acquisition of a Rittergut by an alien must, before a special permission can be accorded, be subject to this condition—that the owner of the property must only exercise the rights appertaining to the same, especially that of attendance at quarter session, by means of a delegate, who is to be chosen from these privileged owners of property (rittergustbesitzer) accustomed to the personal exercise of these rights. In the Rhine Provinces the royal order in council of May 31, 1847, only states that aliens who possess land in the Rhine Provinces are not permitted to exercise the rights of privilege attached to the property until they have taken the oath of allegiance. With regard to capability of election, actively and passively, to the circuit, communal, and provincial sessions in towns and parishes, the condition of being a Prussian subject is in general attached, in accordance with II B, of the above-cited regulations, as such capability is made subject to the possession of right of citizenship or membership of the parish.

In the regulations issued in the year 1867 for the newly acquired provinces respecting the circuit and provincial constitutions, there exist no express provisions touching the necessity of being a Prussian subject in order to exercise the rights of landownership in regard to electing and being elected.

As far as our laws are silent upon this subject, aliens may be looked upon as authorized to exercise these rights. Without doubt those who are in a similar position to

natives, in respect to being large landed proprietors, are not compelled to obtain a special concession or to take the oath of allegiance.

D. Aliens, having powers of policial supervision, are not permitted to exercise their authority in person, but must appoint a native delegate to superintend the police of the place—(§ 7 of the law respecting the rural local magistracy in the six old East Provinces, of April 14, 1856; Collection of Laws, 354.) The appointment to situations under the state and also to the post of consul.

§ 6. Statute of December 31, 1842. Legal Code for 1843, p. 15. Royal order of Oct. 17, 1847, p. 375. Royal order of Jan. 27, 1862, p. 95.

§ 7 of the law on the organization of the consulates of the Confederation of November 8, 1867.

Federal laws, page 1418.

The right to act as jurymen in criminal suits.

§ 62, decree of January 3, 1849, Legal Code, 14.

Art. 56, law of December 3, 1852, p. 209.

The right to act as arbitrators in civil suits is not attached to domicile, (indigenat,) but is nevertheless not allowed to persons living abroad.

§ 41. Introduction to general statutes respecting tribunal.

III. Aliens, with the exception of the corps diplomatique, are subject in like manner as natives to the indirect taxes, as also to the land tax payable on land and houses appertaining to them in this country.

They are liable to the class and income taxes, subject to the modifications mentioned above in § 6 and 18 of the law of May 1, 1851. Legal Code, 193.

In regard to their legal rights in private affairs, aliens are permitted in Prussia to acquire both personal and real property, as also to carry on business of all kinds. As participators in an inheritance within this country they possess equal rights with natives. No deduction shall be made from inheritances falling to aliens, unless the government of the alien raises a like tax on inheritances accruing to aliens.

Royal order of April 11, 1822. Legal Code, page 181.

With reference to the acquisition of property by aliens, the three following limitations are in force:

I. Donations, inheritances, and legacies cannot be left to foreign corporations and public institutions without royal permission.

5. 11. Law relating to donations and bequests to institutions and companies, of May 13. Collection of Laws, page 49.

2. Foreign corporations and other authorized persons, especially joint-stock companies, are not permitted to acquire real property within the Prussian state without royal permission.

Law of May 4, 1846. Collection of Laws, page 235.

3. Estates and manor-houses belonging to the nobility cannot be acquired by foreigners without the permission of the minister of the interior. Royal decree of March 28, 1809, page 7.

With regard to real property situated in Prussia, it is subject to the laws of the jurisdiction in which it may be placed, without regard to the person of the proprietor.

§ 32. Introduction to general body of law.

Every negotiation thereon must consequently be carried out in the form required by the laws of this country.

§ 115, I 5. Body of law.

The personal qualifications and rights of foreigners *(jura status)* are generally judged in accordance with the laws of their country.

§ 23. Introduction to body of law.

If, however, that law should, as regards competency to enter into relations under the cognizance of the law, differ from the Prussian law, then the competency of the contracting parties with respect to such relations entered into in these countries, and with respect to the concluding of contracts, shall be determined by the law with which the subject shall the best comport.

§ 26, 35. Introduction to body of law.

Especial regulations apply to the following cases:

1. Foreigners who are desirous of contracting a marriage in Prussia, either with a native or a foreigner, must, in addition to fulfilling the other legal requirements, prove by a certificate, properly attested by the local authorities of their home, that they are permitted by the laws of their country, without hindrance to their state allegiance, to contract a marriage abroad, or that they have received, in accordance with these laws, the necessary permission for the contracting of the proposed marriage.

The ministers of justice, religion, and the interior are, neverthless, empowered, as well in particular instances as with regard to the legislation of particular states, to permit to their subjects generally the production of such a certificate.

§ 1 and 2. Law of March 13, 1854.

Collection of Laws, p. 123.

2. The carrying on of business is usually permitted to aliens as well as to natives, but—

a. The right of owners of mercantile ships to hoist the flag of the North German Confederation is confined to those foreigners who are naturalized.

§ 1. Law of October 28, 1867.

Confederation Laws, p. 35.

General order of March 25, 1868, relative to keeping the ship's log. Judicial Ministerial Paper, p. 95.

b. Aliens must obtain permission of the minister in order to carry on through agents in Prussia insurances and emigration undertakings.

§ 2. Law of May 14, 1853.

Collection of Laws, p. 293.

§ 7. Law of May 7, 1853.

Collection of Laws, p. 430.

C. Foreign agents, in default of an international treaty, can only carry on a permanent trade with the permission of the minister of commerce; likewise—

D. In accordance with § 12 of the law of hawking, of April 28, 1824, the alien is in general only allowed to carry on the trade of the peddler under greater restrictions than the native.

3. Foreigners can only be appointed guardians to native wards with the consent of the minister of justice, when in all matters relating to the trusteeship, with the permission of their own foreign law, they have submitted to the authority of the courts exercising jurisdiction over guardians and wards.

§ 156, 157. Part II. 18 Common Law.

V. With reference to the administration of the civil and criminal code, the jurisdictional stipulations concluded with separate states come next into operation.

Apart from such stipulations the following principles are in force:

A. In criminal cases.

a. Foreigners are subject to the Prussian criminal code, if they commit in Prussia a crime, misdemeanor, or excess; or abroad, an action which in the Prussian code would come under the heads of high treason or false coinage.

§ 3 and 4. Criminal Code of April 14, 1851.

b. There is this particular difference between the punishment of a native and a foreigner, that in those cases in which a native would be sentenced to police supervision, a foreigner would be banshed from the country, (§ 29 in book above cited,) and the return of an alien thus banished is punishable with three months to two years' imprisonment.

§ 115, as above cited.

c. Aliens who fail to pay the fine affixed to smuggling are at once arrested, if they are found in the country, and the punishment of imprisonment fixed by law is carried into effect if they do not once pay or find security, whilst the alternative punishment of imprisonment is only enforced against a native when the amount of the fine has not been procured by means of an execution on the property of the defrauder.

§ 54, 55. Law of January 23, 1838.

Collection of Laws, p. 89.

§ 24, 25. Law of July 29, 1867.

Collection of Laws, p. 1275.

d. With regard to procedure, the same regulations apply to aliens and natives; but in cases in which a private suit is instituted for examination and punishment, alien private suiters must pay higher fees than natives, if in their native state foreigners and natives are not placed on the same footing.

§ 492 of the law of June 25, 1867, touching the laws relating to penal punishment and procedure in those portions of the country annexed in the year 1866.

In time of war aliens are subject to the jurisdiction of courts-martial in two cases:

aa. Foreign officers attached in time of war to the Prussian army, and their suite; and—

bb. All aliens who, by traitorous conduct at the seat of war, bring danger or hurt to the Prussian troops; but in this latter case this extraordinary tribunal only comes into operation when the King, or the general in his name, gives the order for the assembly, and makes it publicly known.

§ 18. Nos. 2 and 4 of the martial law of April 3, 1845. Collection of Laws, 333.

E. In accordance with the principles of extra territoriality, the ambassadors accredited to this court, the chargé d'affaires, their wives, and persons belonging to the missions accredited to this court, and their servants, are free from all examination and arrest, except sentence is passed on them by the highest state authority. Courts of justice and police authorities are bound to take every precautionary measure to hinder the accomplishment by any of these persons of a meditated crime.

§ 251, 253, 258. Criminal Code of December 4, 1805.

B. In civil suits.

1. Aliens have the same powers as natives asserting their private claims as plaintiffs before the courts of justice.

There are two exceptions to this principle within the jurisdictional limits of the general statute respecting tribunals.

a. According to the regulations of the general statute respecting tribunals, natives as well as aliens are bound to give security to the defendants in cases where the matter cannot be at once settled. But the defendant can only refuse in a suit with a foreigner to go into court, or to allow the suit to continue, if the plaintiff cannot find security.

§ 13, I 21.

b. Aliens can only obtain the arrest of another alien.

aa. When the summons has reference to a contract concluded or to be carried out in this country.

bb. When the debtor in the deed by virtue of which the arrest is sought has made himself liable either to payment or arrest in any place.

cc. When the summons originates in a bill of exchange which has fallen due, and the drawer is a merchant who visits the fairs and markets of this country.

§ 88. I 29. General statute respecting tribunals.

1. According to the regulations of the Hanoverian law in force in the province of Hanover, only aliens are bound as plaintiffs to provide security for the payment of legal costs, in accordance with § 54, 55 of the Hanoverian statute of November 8, 1850. (Hanoverian Code of Laws, page 341.)

2. With reference to the obligations of aliens to appear as defendants before the courts of this country, a difference of procedure prevails in the provinces where the civil code or general statute respecting tribunals or where the common law is in force.

a. Within the judicial limits of the civil code, according to art. 14, every alien, even if he does not live in the country, can be cited before the courts of the country on account of obligations entered into with a native either in this country or abroad.

b. There is, however, a difference in the working of the general statute respecting tribunals which depends upon this, whether personal or real law be put in force against the alien.

1. A personal forum (the forum domicilii) belongs to foreigners in Prussia whenever they have settled there, or are staying in Prussia with that intention. After the cessation of (eximirten) legal status they can be cited on personal matters before the tribunals of the districts in which they have settled, or have declared their intention of settling.

Section 26, 27. I 2. General statute respecting tribunals. Section 1 and 23, decree of January 2, 1849.

2. Foreigners traveling through Prussia have here generally no personal forum; accordingly they can only be cited before the tribunals of this country in those cases in which a native could be cited before another tribunal as constituting his personal forum.

This is the case:

a. Whenever plaint is made respecting the completion or cessation of a contract which was concluded in this country, or should be here carried out, the plaint can be instituted just as well before the tribunals of the country of the concluded contract as of the place for its carrying out; but that forum is only established whenever the defendant allows himself to be met with there, *i. e.*, whenever the plaint can be served upon him within the jurisdiction of any such tribunals.

Sec. 14851. I 2. General statute respecting tribunals.

The last restriction does not apply in plaints respecting bills of exchange. These can be instituted at the place of maturity against any persons responsible for bills.

Sec. 6. Law of February 15, 1850.

Collection of laws, page 53.

b. Claims arising out of an administration can be presented before the tribunal at which any one shall have administered a foreign real or personal estate, until the administrator has wound up the administration.

Sec. 154, 155. I 2. General statute respecting tribunals.

c. If any one has had an attachment served for damages, he must free himself before the judge of the place where the attachment arises, and, if he be a foreigner, must on that account give security.

§ 120. I 2. General statute tribunals.

§ 546. I 14. General body of laws.

This regulation has been recently extended to the case of foreigners injuring natives in this country.

§ 8. Supplement to general statute tribunals.

d. In the case of attachment.

The order of attachment rendered necessary as security of the plaintiff's claim is admissible before every tribunal within whose jurisdiction the defendant lives or where goods of his are to be found. The hearing of the chief claim belongs to the judge of the personal forum of the defendant whenever he has a personal forum in his native

country. With respect to foreigners, the forum determines the attachment as well as the hearing of the chief claim.

§ 79, I 2, § 76, 88–90, I 29. General statute tribunals.

§ 201, 212. Supplement to general statute tribunals.

E. In the case of voluntary (declared or tacit) prolongation.

§ 160–165, I 2.

In the case of obligatory prolongation this takes place—

aa. When aliens cite a native within his jurisdiction in this country, then they can be sued in the same forum (*forum reconventionis*) by the accused on account of all counter-claims, and also when it arises from a claim in a real action relative to a movable or immovable property, whereas natives can in this case be sued only in the real forum.

§ 16, 17, and following, I 19.

bb. In the case of actions for defamation.

When aliens pretend to a claim against a native, they can be accused by the latter upon the hearing of their pretended right, which subjects him to the prejudice of a judgment against the pretension before the court to which the hearing of the case would belong.

§ 4, I 32. General statute tribunals.

G. A divorce suit against an alien can in this country only be instituted when an alien who has no house elsewhere, or who conceals such house, has during his residence in this country married a native woman without acquainting her that he did not intend to remain in this country.

§ 129, I 2. General statute respecting tribunals.

§ 38. Supplement to general statute respecting tribunals.

B. The real forum is open against natives or aliens possessing movable or immovable property for all causes of action having a real right for their basis.

§ 107, 116, I 2. General statute tribunals.

a. In the provinces where the (Landfassinit ?) is in force, the bringing forward of personal plaints *in foro rei sitæ* against an alien proprietor is permissible. Apart from this, even personal claims which arise out of the possession of landed property, or out of transactions which in his quality as landed proprietor he had undertaken, can be instituted against the possessors of immovable property *in foro rei sitæ.*

§ 112, I 2. General statute respecting tribunals.

Under that head the following cases are included: when a landed proprietor refuses—

a. To fulfill his obligations contracted with his farmer or agent, or

b. To allow compensation for loans and materials employed for the improvement of the estate; or when a proprietor

c. Disturbs his neighbor in possession.

d. Or sets up a false claim to the actual rights of the adjoining property, or when he in part or wholly alienates landed property, and does not fulfill his contract, or does not give the due quiet possession.

§ 131, as above cited.

B. These legal regulations are extended in favor of Prussian subjects, so that they can raise claims against any alien living in the country and possessing movable or immovable property, before the tribunal under whose jurisdiction the property is situated, on account of personal claims, with the object of obtaining payment out of the property he owns in the country.

§ 34. Supplement to general statute respecting tribunals.

4. In the courts having cognizance of inheritance there can be instituted against foreign co-heirs—

a. Claims of legatees and of creditors of the testator's estate.

§ 121–4, I 2.

b. Claims on account of inheritance so long as there remains a portion of the inheritance.

§ 125, as above cited.

5. On requisition of the Prussian courts, exécution decreed by foreign courts of law will be carried into effect when there is no doubt as to their competence, or as to the affair in question.

§ 30, I. 2.

Such doubts especially occur whenever the period shall have expired within which, according to the laws of this country, execution by decree can be sought.

§§ 2, 3, I 24.

Or whenever a kind of execution inadmissible by the laws of the land is sought.

6. The §§ 292–6 of the bankruptcy decree of May 8, 1865, contain special regulations for the procedure with respect to native property of a foreign insolvent debtor.

Thus merchants who have a commercial establishment in this country can obtain an insolvency (particular concurs) in respect of property here; and any other insolvent co-debtor is subject, upon petition of the creditors, to the bankruptcy procedure, which allows the appearance of foreign creditors. The balance remaining after the conclusion of the insolvency or the bankruptcy, as the case may be, is delivered to the for-

eign bankruptcy judge after the consent of the minister for foreign affairs and the minister of justice shall have been obtained.

7. Envoys, chargé d'affaires, and residents of foreign powers accredited to this court, and the persons in their service, are exempted from the jurisdiction of the tribunals of this country.

§§ 62, 63, 64, I 2.

If, however, such persons possess real property in this country, they are subject to the regulations under Z. A. But inquiries must be made at the ministry for foreign affairs before the summons is issued, whenever it is not a question of an essentially real action, and whenever the envoy, chargé d'affaires, or his wife, even, is the possessor.

This exemption applies to Prussian subjects who enter the service of the envoy during the period of his service; also to Prussian female subjects who shall marry, after compliance with the requisite conditions, with the foreign envoys, or with persons of the higher rank in their suite. The exemption applies to the wives of servants of an envoy only whenever such persons are also in the service of the envoy, or reside with their husbands together in the envoy's house.

§§ 67, 68, I 2.

C. The above-mentioned regulations, which are in force within the jurisdiction of the "general decree for the administration of justice," come into operation also in those territories in which the Hanoverian "decree respecting actions at law," of November 8, 1850, and the common law obtain. The Hanoverian "decree respecting actions at law," however, recognizes, in accordance with the common law, the *forum contractus*, even when the defendant is, at the time of drawing up of the suit, not within the district of the tribunals.

§ 10, as above cited.

The civil suit respecting forbidden acts belongs unconditionally to that tribunal in the district of which the act occurred.

§ 12, as above cited.

Lastly, the *forum reale* is recognized only on behalf of such real actions respecting possession, boundaries, and partition, as have for their subject immovable property; and, further, on behalf of all actions against the possessors of immovable property considered as such.

Executions arising from judgments passed abroad, and from decisions in arbitration, take place according to the Hanoverian "statute respecting actions at law," (page 533,) with the same exceptions which are valid in the case of native subjects; and, further, that statute lays down in a similar manner to the Prussian statute respecting "bankruptcy," at page 605, that a special bankruptcy can be obtained, and the balance of the estate paid over to the foreign tribunal, in respect of native property of the foreign bankrupt, upon petition of the interested creditors.

RUSSIA.

ST. PETERSBURG, *July* 1, 1868.

MY LORD: With reference to your lordship's dispatch of the 16th instant, instructing me to furnish information for the use of the naturalization commission, as to disabilities to which aliens residing in Russia are subjected by Russian laws, I have the honor to inclose herewith a statement on the subject which I have received from Mr. Roebuck, the consulting lawyer of Her Majesty's embassy, and I also inclose a translation by Mr. Michell of the law promulgated on the 22d of February, 1864, relative to foreigners residing in Russia who may wish to become Russian subjects, or who, having done so, may wish to resume their original nationality.

I have, &c.,

ANDREW BUCHANAN.

Opinion of Mr. Josiah Roebuck, sworn advocate at St. Petersburg, respecting the disabilities to which aliens residing in Russia are subjected by Russian laws.

Several restrictions and disabilities with regard to the enjoyment of civil and political rights, to which foreigners in Russia were formerly liable, have been abolished since 1860, and the rights and prerogatives of foreigners have since been greatly extended.

Foreigners are thus allowed to trade without taking the oath of allegiance.

They can hold landed property, and as landholders are eligible as members of the rural provincial assemblies, with right of vote.

A foreigner may hold a commission in the Russian army, and take the several ranks

in it, and having the rank of lieutenant-general or full general, or of field-marshal, may be appointed senator and member of the council of the empire.

The disabilities to which foreigners are still subject in Russia are the following:

1. They cannot acquire the right of hereditary nobility.

2. They cannot hold the office of judge, magistrate, justice of the peace, advocate, or usher of a council of law, nor serve on a jury.

3. Foreigners are not allowed to enter the civil service. An exception is, however, made in favor of professional and scientific men, such as physicians, surgeons, apothecaries, architects, engineers, professors, and teachers of the arts and sciences, who may acquire in the service of the state the ranks attached to their respective capacities, and receive decorations which they may acquire, do not confer on them the rights and prerogatives enjoyed by national-born subjects.

N. B.—Aliens of the Jewish persuasion are subject to very serious disabilities.

J. MICHELL.

Law of 10th–22d of February, 1864, relative to foreigners in Russia.

1. A foreigner must be domiciled in the empire before he can be admitted as a Russian subject.

2. A foreigner wishing to become domiciled in Russia must inform the governor of the province in which he wishes to reside of his desire to do so, explaining the nature of his occupation in his own country and the pursuits he proposes to follow in Russia.

On the receipt of such declaration the petitioner is considered to be domiciled in Russia, but will nevertheless be accounted a foreigner until he take the oath of allegiance.

3. Foreigners already resident in Russia, distinguished in art, trade, or commerce, or in any other pursuit, may prove their domiciliation by other means than those mentioned in § 2.

4. A foreigner, after being domiciled five years in Russia, may apply to be admitted to Russian allegiance.

5. Foreign married women cannot become Russian subjects without their husbands.

6. The allegiance when sworn to is merely personal, and does not affect children, whether of age or minors, previously born. Those born after the adoption of Russian nationality are acknowledged to be Russians.

7. Specifies rules to be observed in petitioning the minister of the interior to be admitted to Russian allegiance, (documents and declarations required.)

8. It is optional with the minister to grant the above petition or not.

9. An oath to be taken.

10. Mode of taking oaths.

11. In special cases the period requisite to constitute a domicile may be shortened.

12. Children of foreigners not Russian subjects born or educated in Russia, or, if born abroad, yet who have completed their education in a Russian upper and middle school, will be admitted to Russian allegiance, should they desire to do so, a year after they have attained their majority.

13. The children of foreigners wishing to become Russian subjects will be admitted on the same terms as their parents.

14. Foreigners in the Russian military or civil service, or ecclesiastics of foreign persuasion, will be admitted to Russian allegiance without period of domicile.

15. A Russian subject marrying a foreign husband, and therefore considered a foreigner, may, on the death of her husband, or in case of her divorce, return to her former allegiance.

16. The children in the above case are treated as in § 12.

17. Foreign women marrying Russian subjects, and the wives of foreigners who had become Russian subjects, are admitted as Russian subjects without taking oaths of allegiance. Widows and divorced wives retain the nationality of their husbands.

18. Special enactments relative to colonists, foreign agricultural laborers, Bulgarians, &c., remain in full force.

19. Foreigners admitted to Russian nationality are placed in respect to their rights and obligations on a perfect equality with native Russians.

20. Provides for the speedy transaction of business in connection with the adoption of Russian nationality.

II. TRANSITIONAL MEASURES.

1. Foreigners who shall have already adopted Russian nationality may return at any time to their former nationality on payment of all claims against them, (government, private, and other claims.)

2. Those who throw off their Russian allegiance may either quit the country or remain in Russia, enjoying equal rights with other foreigners; they must provide themselves with national passports if in European Russia and belonging to a country in Europe,

within a year; if residing in Siberia or having to obtain such passports from any other quarter of the globe, within two years.

On the lapse of such dates without production of passports, the foreigner must either leave the country or resume his Russian nationality.

3. Exception in cases of desertion, and

4. Annuls all enactment compelling Russian women married to foreigners to sell their immovable property in Russia, with the exception of certain kinds of property which as foreigners they still have no right to possess. With respect to the enactment concerning the payment of three years' dues and export duties by foreigners wishing to leave their Russian nationality, that law is abrogated in respect to those countries which shall adopt a reciprocity in such matters.

III. Abrogating law obliging foreigners to take oaths of allegiance prior to marriage with Russian women and requiring them to ask permission of the emperor to contract marriage with a Russian woman of the orthodox faith.

SAXONY.

No. 39.] DRESDEN, *September* 4, 1868.

MY LORD: With reference to your lordship's circular dispatch of the 16th June last, directing me to report on the disabilities to which aliens residing in Saxony are subjected by Saxon law, I have the honor to inclose in a copy and translation the information which has been kindly furnished me on the subject by the Saxon government.

I have, &c.,

J. HUME BURNLEY.

The Lord STANLEY, M. P., *&c.*, *&c.*, *&c.*

[Translation.]

In reply to the note of Her Britannic Majesty's chargé d'affaires, of the 22d June last, relative to the disabilities to which aliens residing in Saxony are subjected, the undersigned has the honor to make the following communication:

The exercise of political rights in Saxony in their immediate relation to the state, as, for instance, the right of voting and being elected for the diet as well as to the municipalities, as, for instance, the right of election of representatives for town and country, implies Saxon citizenship.

For the exercise of certain professions, such as that of a lawyer, a notary public, and medical practitioner, it is likewise necessary to be a Saxon subject.

The regulations of our legislature respecting penalties to which aliens are subject as regards the civil law may be seen from the annexed document, which is a summary of the regulations respecting aliens contained in the civil code, concerning the acquisition and the laws of citizenship in the kingdom of Saxony of the 2d July, 1852, as well as in the penal code.

To obviate mistakes it is to be observed that the twelfth paragraph of the civil code has been left out because it does not bear on the question, as it only prescribes that the mother of an illegitimate child may enforce her rights for the support and education of the child, although the conception may have taken place in a country the laws of which do not recognize such claims.

With respect to civil proceedings at law, aliens are only in the following cases placed on a different footing from the natives:

1. Claims which by mutual agreement are to be settled in the country, or which it would be difficult to prosecute abroad, may, in default of payment, be recovered by the native from the alien who has no landed property in the country, either by arrest, inhibition of passport, or seizure of an adequate portion of the alien's property; provided the claim is to a certain degree established, and provided the alien does not voluntarily enter into recognizances. On the other hand, the arrest of a native supposes a greater risk of losing his claim, and lays him under the stricter obligation of proving it.

(See the order of process of 1622; title ii, § 1.)

2. As a general rule the plaintiff, after having obtained a legal sentence against the defendant for the recovery of his claims, before his claims are actually satisfied, is not liable to an action which the defendant may bring against him in order to get the sentence annulled, nor can the course of law be checked by such a counter-suit.

If, however, the plaintiff who has obtained a legal sentence against the defendant, and is prosecuted by the latter for the recovery of what he has been sentenced to pay him, be an alien, the defendant, not to run any risk of loss, is entitled to demand a temporary deposition of the sum in question, making the alien liable to the action brought against him.

(See the order of process explained of the year 1724; title vi, § 1.)

3. Aliens possessing landed property in this country may, though not resident on it, be prosecuted for the recovery of all personal claims at the place where their property lies.

(See the article for the greater expedition of lawsuits of the 16th June, 1583.
Order of process of the year 1622; title 4, § 3.
Order of process explained of the year 1724; title 4, § 2.)

Whereas natives cannot be cited before the law court of the district in which his property lies, unless other circumstances should declare the competency of such a tribunal;

4. Aliens may, for certain claims, have recourse to the Elbe courts, whereas the competency of such courts respecting the claims of natives depends on certain contingencies.

The mode of proceeding against aliens for such claims has to be simplified and the case to be sooner decided.

(See regulations concerning the competency of the Elbe courts of the 11th September, 1863; Law Gazette and ordinances of the year 1863, p. 722 and following.)

5. Finally, one of the regulations of the law to be noticed is contained in the order of process of the year 1724, according to which regulation the plaintiff is obliged in more important cases to give a security of thirty thalers, with a view of paying the costs arising from the suit.

From this obligation, however, are exempt such as possess landed property in the country, or exercise a trade, or own a mercantile establishment.

It is a question whether any difference should be made between a native and an alien, and whether the same regulation should not also be applied to a Saxon subject who possesses landed property or carries on some mercantile business abroad. In other respects the alien is placed on the same footing as the native respecting civil suits. Regulations such as that contained in the general mining law of the 16th of June of this year, § 16, in virtue of which the alien who owns a mine in this country has to appoint an assignee in the country in order to receive the summons of the respective court of law, have been omitted here, as well as other similar regulations, as they are only intended to facilitate transactions between inland courts and aliens.

The undersigned avails himself, &c.

VON BOSE,
Acting Foreign Minister.

DRESDEN, 17*th August*, 1868.

Abstract from the civil code.

§ 6. The laws of the country are applicable in the country in as far as public rights especially public treaties, and the following regulations allow.

§ 7. The enjoyment of rights and liberty of action of a person depends on the laws of the state to which he belongs.

§ 8. The liberty of action of a foreigner is subject to the home laws if his actions render him accountable.

§ 9. The form to be observed in legal transactions is regulated by the laws of the place where the contract is drawn up.

It suffices, however, to observe the laws of the place where the business is to be carried on.

§ 10. The rights to movable and immovable property, as well as the right of possession, depend on the law of the place where such property lies.

§ 11. Aliens are to be judged by the laws of the place where they are to be settled.

§ 13. Marriage and divorce are subject to the laws of the husband's country.

§ 14. Marriage settlements are subject to the laws in force at the husband's domicile at the time of the marriage contract. Such rights are not altered by a change of residence.

Donations between husband and wife are regulated by the laws in force for the time at the place where the husband resides.

§ 15. Paternal authority follows the laws of the country to which the father belongs.

§ 16. Guardianship is subject to the laws of the minor's country.

§ 17. Inheritance is decided by the laws of the place at which the testator last resided. In case of several residences the laws of the last are to be observed.

§ 18. In as far as rights depend upon the option of the parties, they are allowed to avail themselves of other laws than those immediately applicable.

§ 19. Foreign laws are not admissible if they are excluded explicitly or implicitly by the laws of the country.

§ 20. In case the laws of a foreign state make a difference between natives and aliens, this difference is to be taken into account with respect to aliens by the laws of this

country if special regulations are not against it. Such reciprocity cannot be evaded by ceding one's rights to another.

§ 1878. An alien, being a minor, and having immovable property in the country, has to appoint a guardian for it. The foreign guardian of the minor may act as such.

§ 1879. If a foreigner who has a guardian abroad or is under the parental care of a foreigner requires a guardian in the country for some legal purpose or lawsuit, such a guardian may be appointed by the courts of the country.

Abstract from the penal code.

ART. 3.

Foreigners who have committed a crime, and are to be tried by a tribunal of the country, are subject to the penalties of this code, with the exception of the case mentioned in art. 8.

ART. 4.

Trial of a foreigner for a crime committed.

(*a.*) Foreigners enjoying the rights of extraterritoriality.

ART. 5.

(*b.*) With respect to other foreigners, those who are guilty of a crime are likewise to be tried only by order of the ministry of justice if the crime has been committed abroad; but even in this case the order is not requisite—

1. If the crime has been committed against a state, its authorities, or subjects, or persons who live under its protection, or were in Saxony at the time of the crime.

2. If the criminal has settled in Saxony.

ART. 8.

Foreign penal laws.

If an offense has been committed abroad by a foreigner, or is, according to articles 4, 5, 6, brought before a tribunal, he is to be judged by the laws of the country where the offense has taken place, provided it be known or can be proved that the culprit would, according to these laws, either not be punished at all or less severely than by the Saxon laws, or only upon indictment, with the exception of the cases mentioned in article 5, No. 1, as well as of offenses committed against the King and the royal family, in which cases the present penal code has to be enforced; if in conformity with the above regulations the judge has to refer to a foreign penal law, and this law inflicts upon the culprit a punishment which is inadmissible according to the present law, he cannot go beyond the wording of the law.

ART. 9.

Foreign punishment.

In case the culprit has already been punished for his offense by a competent tribunal of another state he cannot be punished again for the same offense by a tribunal of this country, unless he has at the same time made himself guilty by violating certain obligations incumbent on him toward the country, its sovereign, and his subjects, and then his previous penalty is to be taken into account even in the case of a sentence pronounced by an incompetent foreign tribunal.

ART. 312.

Trade-marks.

Whoever counterfeits, with the intention to deceive, the peculiar marks of merchants and manufacturers, is liable to be imprisoned for a term not exceeding four months, and if the imprisonment is only for two months he has to pay a fine up to two hundred thalers; the counterfeiter, however, can only be indicted by the merchant or manufacturer whose trade-marks he has forged.

Complaints of foreign merchants and manufacturers respecting such counterfeits can only be attended to if they can prove reciprocity on the part of the state to which they belong.

(Extract from the law respecting the acquisition and loss of Saxon citizenship of the 2d July.)

§ 9.

Obligation requiring naturalization.

Every foreigner in the kingdom of Saxony who desires (*a*) to become possessed of landed property in town or country, with personal residence;

(*b.*) Or to obtain naturalization according to the forms of municipal law; or

(*c.*) To exercise in the country a trade or profession which in a town would require naturalization; or

(*d.*) To hold a municipal office or some other employment in church or school which is not under government patronage, is obliged previously to become a Saxon subject.

Persons mentioned under "*d*" may apply for it to the respective authorities in whom the patronage is vested.

§ 10.

There is no necessity for naturalization—

(*a.*) For such as hold landed property in Saxony on which they are not domiciled and which is under foreign management;

(*b.*) For foreigners who acquire landed property in Saxony with habitual residence but usually reside abroad, as long as they continue abroad;

(*c.*) When a wholesale business or manufacture is established in the country by a foreigner residing abroad.

In the cases *b* and *c*, on condition that the obligations of citizenship which are attached to a property or undertaking are fulfilled by a proper native representative.

Foreigners under § 10, (*a, b, c,*) participate in the privileges and duties of a Saxon subject only as far as the nature of their property or trade may admit or be sanctioned by the law.

The rights of political honors in Saxony cannot be exercised by them.

SWEDEN.

STOCKHOLM, *July* 31, 1868.

MY LORD: I have the honor to inclose copy of a letter I have received from Count Wachtmeister, forwarding for the information of Her Majesty's government a memorandum of the disabilities to which foreigners residing in Sweden are subjected by the Swedish laws.

I have, &c.,

J. PAKENHAM.

The Lord STANLEY, M. P., *&c., &c., &c.*

STOCKHOLM, *le* 27 *Juillet*, 1868.

MONSIEUR: Par une note du 24 du mois dernier, M. le Ministre d'Angleterre s'est adressé à M. le Baron d'Ugglas, faisant alors les fonctions de ministre des affaires étrangères, avec la demande d'obtenir pour le compte du gouvernement britannique des renseignements complets sur les disqualifications (disabilities) auxquelles la loi suédoise assujettit les étrangères résidant en Suède.

Je me vois maintenant à même de fournir ces renseignements, et je m'empresse de vous les transmettre en joignant ci-près le mémoire élaboré sur ce sujet au ministère de la justice.

Veuillez, &c.,

(Signé) WACHTMEISTER.

Mr. PAKENHAM, *&c., &c., &c.*

[Translation.]

P. M.

Relative to the disqualifications to which foreigners settled in Sweden are subject, on the ground of existing Swedish statutes.

Swedish subjects only are eligible for election to the "Riksdag," (the Swedish legislative chambers.) (See § 22 of the "Riksdag" regulations.)

It does not appear, either, that foreigners are entitled to take part in the election of members of the "Riksdag," or of members of the municipal administrative bodies. (See § 8 of the statute relative to municipal administration in the rural districts; § 10 of the statute relative to municipal administration in towns; § 4 of the statute relative to church vestries ("Kyrkoråd") and school committees, ("Skolråd;") §§ 3, 5, and 7, of the statute relative to the "lands ting," (boards elected in provincial districts for the management of local communal affairs,) all of the 21st day of March, 1862, compared with §§ 6 and 14 of the "Riksdag" regulations.)

Offices of trust and service under the government may, as a rule, only be filled by natural-born Swedish men.

Foreigners may, notwithstanding, in certain cases, be called and appointed:

Firstly. To the post of professors or teachers at the universities, with the exception of posts for theological instruction; they may also be appointed teachers, or in any

other capacity, at other scientific, industrial, and artistic institutions, and also to the medical profession.

Secondly. To military posts; not, however, to that of commander of a fortress. (See § 28 of the constitution, "Regerings Formen.")

Foreigners belonging to countries in which Swedish subjects are entitled to inherit property also possess the same right in Sweden, (see chap. 15, § 2, of the statute of inheritance, "Arfda Balken,") so that they may thus become the holders of real and personal estate in this kingdom.

Foreigners may not otherwise hold real and personal estate in Sweden without the special permission of the King, (see the royal proclamation of the 3d October, 1829;) but there appears to be no legal hinderance to foreigners possessing the usufruct of real and personal estate on lease or otherwise.

Foreigners may not act as the guardians of minors or others. (See chap. 20, § 8 of the statute of inheritance, "Arfda Balken.")

With reference to the right of foreigners to exercise trade and industry in this country:

Foreigners are permitted to be part owners of vessels registered either for home or foreign trade; but they may not possess more than one-third of the tonnage of Swedish vessels, nor be the managing owners.

Foreigners who have obtained permission of the king to dwell in the kingdom, may, also, after special inquiry in each case, obtain permission to exercise trade, manufactures, mechanical employments, or any other calling. (See the royal statute of the 18th June, 1864.)

It should be specially observed that the King possesses the prerogative of adopting foreigners as Swedish subjects by act of naturalization. (See § 28, sec. 2 of the constitution, "Regerings Formen.")

The manner of such naturalization and its conditions are determined by the royal statute of the 27th February, 1858, which enacts generally—

That the rights of Swedish subjects may, on application to the King, be obtained by foreigners who have attained the age of 21, are of good repute, have resided in the kingdom for three years, and who possess the means of supporting themselves.

That such application shall be accompanied by a certificate of the age of the candidate, the country to which he belongs, the time when he arrived in the kingdom, his character, and the religious faith he professes.

And that the candidate, provided the application be granted, shall, within the term prescribed by the King, and before the proper authorities, attest that he has ceased to be a subject of the foreign power to which he formerly belonged, or otherwise resign, in writing, all the political privileges and rights he may possess in the said foreign country; and the candidate shall also take the oath of allegiance to the King as a Swedish subject.

Thus naturalized foreigners enjoy the same rights and privileges as natural-born Swedes, except in so far that they cannot be appointed members of the council of state, ("Statsråd.")

In fidem,

GEORGE FRENDBERG APGEORGE,
Sworn Translator.

STOCKHOLM, *July* 30, 1868.

SWITZERLAND.

BERNE, *July* 4, 1868.

MY LORD: In obedience to the instructions contained in your lordship's dispatch of the 16th ultimo, I have the honor to inclose herewith copy of a note dated the 26th ultimo, from the federal council, giving an account of the disabilities to which aliens residing in Switzerland are subjected by law.

I have, &c.

J. SAVILLE LUMLEY.

To the Right Hon. the Lord STANLEY, M. P., *&c.*

BERNE, *le* 26 *Juin*, 1868.

En résponse à la note que M. le Ministre de Sa Majesté britannique lui a adressée le 19 ème courant, le conseil fédéral a l'honneur d'annoncer à son excellence que les étrangers résidant en Suisse ne possèdent aucuns droits politiques, qu'ils sont exclus du service militaire, et que, s'il n'existe pas des traités, ils ne peuvent dans différents cantons acquérir des propriétés foncières sans la permission du gouvernement cantonal, ou même du grand conseil.

Des citoyens suisses naturalisés ne sont, à teneur de l'art. 64 de la constitution fédérale, éligibles au Conseil National qu'après cinq ans de possession du droit de cité.
Le Conseil Fédéral, &c.
Au nom du conseil fédéral, le président,
(Signé) DUBS.
Le Chancelier,
SCHIESS.

A Son Excellence M. LUMLEY, *&c.*,

[*N. B. In place of the matter relating to the United States is substituted A, a report from the examiner of claims on the statutory disabilities of aliens; B. Extracts from the analytical index to the treaties of the United States, showing what disabilities are removed from aliens by treaty.*

A.—*Report from the examiner of claims respecting the disabilities of aliens in the United States.*

BUREAU of CLAIMS, *November* 5, 1873.

A synopsis of the law relative to the rights and disabilities of aliens in acquiring title to lands and in holding and alienating them under the Constitution and laws of the United States, the constitutions and laws of the several States, and the laws of the several Territories of the United States.

UNITED STATES.

Aliens are not prohibited from purchasing the public lands of the United States, either at public land sales or by private entry at the minimum price when such lands are declared subject to private entry.

Only such aliens, however, as have declared their intention (in the manner provided by the acts of Congress on the subject of naturalization) to become citizens of the United States, are entitled to the benefits of the acts of Congress granting the right of pre-emption to the public lands, and the act securing to citizens the right of free homesteads.

The rights and disabilities of aliens in acquiring title to lands either by inheritance or purchase, and in holding and alienating the same within the several States and Territories, are limited and regulated by the laws of the States and Territories respectively within which the land is situate. In the following enumerated States aliens have the right to acquire title to land by purchase, gift, devise, or descent, and to hold and alienate it in the same manner and to the same extent as citizens: Florida, Illinois, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Michigan, New Jersey, Nebraska, North Carolina, Ohio, Oregon, South Carolina, and Wisconsin. In the States of Connecticut, Georgia, Iowa, Kentucky, Missouri, Mississippi, New Hampshire, and Nevada the same unconditional rights as to acquiring, holding, and conveying land are secured to aliens who are residents of the State.

In the following-named States an alien, before he is entitled to acquire, hold, and convey land, must, in addition to residence in the State, have declared his intention to become a citizen of the United States, before the title is acquired, or must do so after acquiring title within a time fixed by the law of the State, (the periods allowed for performing this condition vary in the different States:) Arkansas, Maryland, Indiana, Delaware, Rhode Island, Tennessee, Virginia, West Virginia, and Vermont.

In Alabama an alien cannot hold lands either by purchase or inherit-

ance. In California aliens cannot acquire by purchase, but may take by inheritance. A non-resident alien cannot hold for a longer period than five years; after that time the land is subject to escheat.

In New York alien inhabitants may purchase to the extent of one thousand acres. (Act of March 26, 1802.) Aliens taking by inheritance, title shall not be questioned if they declare intention to become citizens, (act of April 30, 1845,) nor on account of alienage of former owner. (Act of 24th of April, 1872.) Lands liable to escheat released in many instances by act of the legislature.

In Pennsylvania alien residents may take land by purchase or inheritance to the amount of five hundred acres, and may hold and alienate, within this limit, in the same manner as citizens.

In Texas aliens cannot acquire by purchase unless when the title emanates from the State directly to such alien purchaser. If an alien inherits land he is allowed nine years to become naturalized and take possession of the land.

In the Territories of Arizona, Colorado, and New Mexico aliens may take by purchase or inheritance, hold and convey lands in the same manner as citizens. No conditions annexed.

Dacotah.—There is no legislation on the subject, but by the organic act all inhabitants of the Territory may purchase and hold lands.

Idaho and Montana have no legislation on the subject, but have by special act adopted the common law of England.

In Washington Territory the law of Oregon is the law on the subject, and in the District of Columbia aliens take and hold in the same manner as citizens.

Respectfully submitted.

HENRY O'CONNER.

B.—*Extracts from the analytical index to the treaties of the United States with other powers, showing what privileges are conferred upon aliens in the United States by treaties.*

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ASYLUM:

vessels and citizens seeking asylum by reason of stress of weather to be treated with humanity, and shall be allowed to repair and depart—Bolivia, Brazil, Columbia, (New Grenada,) Ecuador, France, (obsolete,) Guatemala, Hayti, Mexico, Morocco, (as to United States vessels,) Netherlands, (obsolete,) Nicaragua, Portugal, Prussia, San Salvador, Sardinia, Spain, Sweden, (see Sweden and Norway.)

to be exempt from the payment of duties on vessel or cargo unless entered for consumption—Hawaiian Islands, Morocco, (as to American vessels,) Sardinia.

to be subject to no duties or charges except pilotage, unless remaining longer than forty-eight hours in port—Columbia, (New Grenada.)

unloading and reloading not to be considered an act of commerce—Sardinia, Two Sicilies.

vessels seeking asylum to be treated as national vessels—Sardinia, Two Sicilies.

shelter shall not be given in ports of one power to enemies of the other power who have captured prizes from the other at sea—France, Great Britain.

consulates not to be used as asylum—Germany, Italy.

AUBAINE, DROIT DE: [See "*Personal property*," "*Real estate.*"]

abolished by treaty with Bavaria, France, (obsolete,) Hesse, Nassau, Saxony, Würtemberg.

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DÉTRACTION, DROIT DE:

abolished by treaty with Bavaria, France, (obselete,) Hanover, Hanseatic Republics, Hesse, Nassau, Saxony, Spain, Würtemberg, Sweden.

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PERSONAL PROPERTY:

citizens of each, in the country of the other, may own personal property, and may dispose of it by gift, will, or in any other way, and may take such property by gift, purchase, will, or succession, paying only such dues as the inhabitants of the country would pay in such case—Austria, Bavaria, Bolivia, Brazil, Brunswick, and Luneburg, Columbia, (New Grenada,) Costa Rica, Dominican Republic, Ecuador, France, Guatemala, Hanover, Netherlands, (obsolete,) Mecklenburg-Schwerin, Mexico, Oldenburg, Hanseatic Republics, Hawaiian Islands, Hayti, Hesse-Cassel, Houduras, Italy, Nassau, Nicaragua, Orange Free State, Paraguay, Portugal, Prussia, Russia, San Salvador, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Würtemberg.

citizens of each in the country of the other may own and succeed as above, and on removal of the property it shall be exempted from all duty called "Droit de détraction"—France, (obsolete,) Sweden. [See "*Sweden and Norway.*"]

in case of the absence of persons who would be entitled to personal property so situated on the death of the owner, the property shall receive the same care which would be bestowed upon the property of a native—Austria, Bavaria, Brunswick, and Luneburg, Dominican Republic, Hanover, Hawaiian Islands, Hayti, Hesse-Cassel, Hondurns, Mecklenburg-Schwerin, Nassau, Orange Free State, Prussia, Russia.

in case of the absence of persons who would be entitled to personal property so situated on the death of the owner, the property shall receive the same care which would be bestowed upon the property of a native—Continued.
Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Würtemberg.

disputes as to the inheritance of such property shall be decided by the courts of the country where the property is situated—Austria, Brunswick and Luneburg, Dominican Republic, Hanover, Hawaiian Islands, Hayti, Hesse-Cassel, Honduras, Mecklenburg-Schwerin, Nassau, Orange Free State, Prussia, Russia, Sardinia, Saxony, Spain, Swiss Confederation, Two Sicilies, Würtemberg.

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REAL ESTATE:

citizens and subjects of each nation are to be on the footing of the most favored nation in the territories of the other—Italy.

citizens of each country may dispose of real estate in the territories of the other by will, donation, or otherwise—France, (obsolete,) Bavaria, Colombia, (New Granada,) San Salvador, Two Sicilies.

their heirs, legatees, and donees, being citizens or subjects of the other contracting party, may succeed to their real estate—Bavaria, Colombia, (New Granada,) France, (obsolete,) San Salvador, Two Sicilies.

citizens of each country may dispose of real estate in the territories of the other, where the laws of the state in which it is situated permit it to be done—Nicaragua, Swiss Confederation.

citizens of each country may possess real estate in the territories of the other, and dispose of it in the same manner as citizens can—France, San Salvador.

the United States are to recommend states where this is not permitted, to pass laws to allow it; and France reserves the right of establishing reciprocity.

where, on the death of the owner, real estate in the territories of the one power descends upon a citizen of the other, who is disqualified by alienage from taking, he shall be allowed two years to sell the land and withdraw the proceeds—Austria, Bavaria, Hesse, Nassau, Saxony, Würtemberg.

he shall be allowed three years—Brazil, Ecuador, Guatemala, Hanseatic Republics, Swiss Confederation.

he shall have the longest period allowed by law—Bolivia, Dominican Republic.

he shall be allowed the time allowed by the law of the state or country—Brunswick and Luneburg, Nicaragua, Orange Free State, Portugal, Russia, Swiss Confederation.

he shall be allowed a reasonable time—Hanover, Hawaiian Islands, Portugal, Prussia, Russia, Sardinia, Spain, Mecklenburg-Schwerin.

the time allowed may be prolonged by the government in whose territories the land is situated—Austria, Hesse, Nassau, Saxony, Würtemberg.

the tax or dues charged on the succession or withdrawal is to be the same as that imposed upon natives—Austria, Bavaria, Bolivia, Brazil, Brunswick, and Luneburg, Colombia, (New Granada,) Dominican Republic, Ecuador, France, Nicaragua, Orange Free State, Portugal, Russia, San Salvador, Sardinia, Swiss Confederation, Two Sicilies.

such tax or dues to be the same as imposed upon the most favored nation—Hawaiian Islands.

there shall be no duties of detraction—Bavaria, France, Guatemala, Hanover, Hanseatic Republics, Hawaiian Islands, Saxony, Spain, Prussia.

REAL ESTATE—Continued.

the property of absent heirs is to receive the same care as if it were the property of citizens—Austria, Bavaria, Hesse, Nassau, Saxony, Two Sicilies, Würtemberg.

all disputes relating to such real estate must be settled before the courts of the country—Bavaria, Hesse, Nassau, Orange Free State, Saxony, Swiss Confederation, Two Sicilies, Würtemberg.

RECIPROCAL PRIVILEGES OF CITIZENS OF EACH NATION WITHIN THE TERRITORIES OF THE OTHER:

the citizens of each may reside in the territories of the other, remaining subject to the laws—Argentine Confederation, Austria, Bolivia, Brazil, Colombia, (New Granada,) Costa Rica, Denmark, Dominican Republic, Ecuador, Great Britain, (obsolete,) Greece, Guatemala, Hanover, Hawaiian Islands, Hayti, Honduras, Italy, Mecklenburg-Schwerin, Oldenburg, Mexico, Nicaragua, Portugal, Prussia, Russia, San Salvador, Sardinia, Sweden and Norway, Swiss Confederation, Two Sicilies, Liberia.

the citizens of each may reside in the territories of the other—Borneo.

vessels and effects of citizens of each in the territories of the other are to be protected and defended—Sweden, (see Sweden and Norway,) Tunis.

citizens of each being within the territories of the other shall be exempt from forced military service—Argentine Confederation, Costa Rica, Dominican Republic, France, (obsolete,) Hawaiian Islands, Hayti, Honduras, Italy, Mexico, Nicaragua, Orange Free State, Paraguay, Switzerland, Two Sicilies.

from billeting of soldiers—Two Sicilies.

from contribution in kind or money for compensation for personal military services—Italy, Two Sicilies, [they shall *not* be exempt from such contribution—Orange Free State, Swiss Confederation.]

from forced loans—Argentine Confederation, Bolivia, Costa Rica, Dominican Republic, Hawaiian Islands, Honduras, Nicaragua, Paraguay, Two Sicilies.

from military exactions—Argentine Confederation, Costa Rica, Dominican Republic, Hayti, Honduras, Nicaragua, Paraguay.

from contributions—Bolivia, Nicaragua.

from contributions in time of war, in which case property is not to be taken without compensation paid in advance—Nicaragua; without compensation on the same footing as natives—Orange Free State.

from extraordinary contributions not general and established by law—Hawaiian Islands, Two Sicilies.

from contributions higher than those paid by natives—Costa Rica, Dominican Republic, Hayti, Honduras, Mexico, Orange Free State, Paraguay.

from judicial or municipal office—Italy.

the citizens of each shall not be liable to the embargo or detention of their vessels, cargoes, merchandise, or effects—Bolivia, Brazil, Colombia, (New Granada,) Ecuador, Guatemala, Italy, Mexico, Netherlands, (obsolete,) San Salvador, Spain, Sweden, Tunis; without compensation—Bolivia, Brazil, Colombia, Ecuador, Guatemala, Italy, Mexico, San Salvador; to be paid in advance—Bolivia; when it can be agreed upon—Italy.

their vessels are to be subjected to such embargo only in cases of urgent necessity, and an equitable indemnity shall be paid—Prussia.

their books and papers are not to be subjected to inspection without the order of a competent legal tribunal—Bolivia, Hawaiian Islands, Hayti, Two Sicilies.

the citizens of each country are to have a right to travel in the possessions of the other—Bolivia, Hawaiian Islands, Italy, Nicaragua, Two Sicilies.

citizens of each residing in the territories of the other may intermarry with natives—Nicaragua.

may enjoy freedom of religious belief, respecting at the same time the laws and usages of the country—Brazil, Bolivia, China, Ecuador, Guatemala, Hawaiian Islands, Hayti, Netherlands, (obsolete,) Colombia, (New Granada,) Paraguay, Argentine Confederation.

and also of religious worship, on conditions as named in the respective treaties—(as to consuls and agents,) Algiers, (obsolete,) Argentine Confederation, Colombia, (New Granada,) Costa Rica, Dominican Republic, Honduras, Mexico, Nicaragua, Paraguay, San Salvador, Sweden, (see Sweden and Norway.)

they are to have the liberty of burial—Argentine Confederation, Brazil, Bolivia, Colombia, (New Granada,) Costa Rica, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Netherlands, (obsolete,) Nicaragua, Mexico, Poraguay, San Salvador, Sweden, (see Sweden and Norway.)

on the breaking out of a war between the two countries, the citizens of each in the country of the other may remain and continue to trade so long as they behave peaceably—Argentine Confederation, Paragnay, Great Britain, (obsolete.)

all may remain whose occupations are for the common benefit of mankind—Italy, Prussia.

RECIPROCAL PRIVILEGES, &c.—Continued
six months are granted to merchants and citizens to arrange their busines and withdraw their effects—France, (obsolete,) Dominican Republic, Hayti, Two Sicilies.
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SUCCESSION:
the dues are to be the same as those paid by natives—Denmark, German Empire

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WÜRTEMBERG.

STUTTGART, *June* 24, 1868.

MY LORD: I have had the honor to receive your lordship's dispatch of the 16th instant, requiring information as to the disabilities to which aliens are subject in Würtemberg.

I am able to reply without loss of time that the Würtemberg legislation on this subject is extremely liberal and is based entirely on reciprocity. An alien establishing himself in this country can claim by law every advantage and liberty possessed by a Würtemberg subject desirous of settling himself in a commune to which by birth he does not belong, if a similar liberty be granted to Würtemberg subjects in the country of the alien in question. In a contrary case the law reserves to the authorities the right of refusing to the aliens privileges which would not be enjoyed by Würtembergers in the foreign country in question, but the exercise of this right by the authorities is very seldom practiced, and would be so only under special circumstances.

In the case of an alien purposing to practice any trade or industry in Würtemberg all that is required is that he shall establish his nationality and furnish proof, if called upon to do so, (and this last does not often occur,) of the right of Würtembergers to do the like in the alien's own country. A case of this nature has, however, lately come before me, where difficulties were thrown in the way of a British subject employing work-people in a particular fancy manufacture practiced successfully in a Würtemberg town. The individuals who had hitherto had this trade in their hands were jealous of the Englishman's interference and success, and the probable consequent rise of prices of labor in the manufacture in question, and notwithstanding the manifest advantage to the town which the competition occasioned, the Englishman was so far incommoded as to be threatened with prohibition of his further proceedings by the authorities there, unless he produced his passport and a certificate from Her Majesty's legation that a Würtemberg subject would be permitted to engage in a similar trade in London. The man came to Stüttgart, and after being supplied with the papers in question, no further obstacle is interposed to his undertaking.

There is a certain latitude in the authority of the police with regard to aliens establishing themselves in Würtemberg by which, if the latter should conduct themselves in a disorderly manner, or render themselves obnoxious to the public peace or propriety, or even to the government authorities, they may be summarily sent out of the country; but the same right is exercised by the authorities of any commune in the country against Würtembergers not belonging to it, and who can be under the above circumstances turned out of the place.

It may therefore be answered to your lordship's question that no disabilities exist in Würtemberg against aliens, who may purchase real property and inherit the same as freely as natives.

I have instructed Mr. Baillie to report to me upon the state of the law in the Grand Duchy of Baden on the above subject.

I have, &c.,

E. C. R. GORDON.

The Right Honorable Lord STANLEY, *&c.*

APPENDIX No. III.

RIGHT OF ALIENS TO HOLD LANDS.—COLONIAL AND INDIAN LAWS.

MEMORANDUM BY MR. ABBOTT.

Aliens are debarred by the common law of England from holding, inheriting, or transmitting landed property, for, being under a foreign allegiance, they are supposed to be incapable of rendering service and homage to the sovereign of England, from whom it is a settled principle of tenure that the title to all lands in the kingdom is primarily derived.

That the forfeiture to the Crown of lands held by aliens has been enforced from a very early period appears from 17 Edward the 2d, stat. 2, cap. 12: "That the King

should have escheats of the lands of Normans, of whose fee soever they were, saving the service appertaining to the chief lords of the same fee; and this also was to be understood, that if any inheritance descended to any that was born in the parts beyond the sea, whose ancestors were, from the time of King John, under the allegiance of the Kings of France, and not of the Kings of England, as then late it had happened of the barony of Monmouth, after the death of John de Monmouth, (whose heirs were of Britain and other places,) King Henry, by the foresaid occasion, recovered many escheats of Normans' lands out of the fees of other men, and gave them to be holden of the chief lords of the fee, by the services due and accustomed therefore.

"An alien is entitled to purchase in fee-simple lands, tenements, or hereditaments, although he cannot hold them, for upon office found the King shall have them; and even on a covenant to stand seized, a use will arise for an alien; but of course the same result will follow as in the case of a purchase, and the same would take effect where an alien purchased lands in joint tenancy; and the King would, on office found, be entitled to a moiety.

"With respect to copyholds, it appears to be doubtful what rights an alien may acquire therein, for the lord is not to be prejudiced by losing his services and fines; but it is laid down in Watkins on Copyholds that an alien cannot be a copyholder; and it should seem that if an alien purchases any copyhold property it would escheat to the lord. However, the title of an alien in all respects will be good against all persons except the Crown in the case of freeholds, and as against the lord in case of copyholds." (Hansard's "Law Relating to Aliens," 1844, pp. 131–133.)

Previously to the act 7 and 8 Vict., c. 66, aliens could not take houses on lease for a term of years without danger of forfeiture.

The statute 32 Henry the 8th, cap. 16, enacted that no alien strangers, not being denizens, should take any leases of houses, under a penalty of 5*l.*; and all leases granted to strangers, artificers, or handicraftsmen, born out of the King's obeisance, (nor being denizens) of any dwelling-house or shop within this realm, or any of the King's dominions, are declared to be void and of no effect; and the person so taking such lease forfeits 100*l.*, and the person letting, 100*l.* more; one moiety to the King, and the other to him that will sue for the same.

Lord Coke explains the law as follows: "As to a lease for years of a house for the habitation of a merchant stranger, being an alien, whose King is in league with ours, and a lease for years of lands, meadows, &c., upon office found, the King shall have it; but of a house for habitation he may take a lease for years, as incident to commerce, for without habitation he cannot merchandize or trade. But if he depart or relinquish the realm the King shall have the lease. So it is if he die possessed thereof, neither his executors or administrators shall have it, but the King; for he had it only for habitation as necessary for his trade or traffique, and not for the benefit of his executor or administrator. But if the alien be merchant, then the King shall have the lease for years, albeit it were for his habitation; and so it is if he be an alien enemie. And all this was so resolved by the judges assembled together for that purpose in the case of Sir James Croft. Pasch. 29, of the reigne of Queene Elizabeth."

Upon the report of the aliens committee of 1843, the law relating to aliens holding personal and leasehold property was amended by the fourth and fifth clauses of the act 7 and 8 Vict., c. 66:[1] (Naturalization Act, appended to my memorandum, Addenda I.)

"IV. And be it enacted that from and after the passing of this act every alien, being the subject of a friendly state, shall and may take and hold, by purchase, gift, bequest, representation, or otherwise, every species of personal property, except chattels real, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions, privileges, and capacities as if he were a natural-born subject of the United Kingdom.

"V. And be it enacted that every alien now residing in, or who shall hereafter come to reside in, any part of the United Kingdom, and being the subject of a friendly state, may, by grant, lease, demise, assignment, bequest, representation, or otherwise, take and hold any lands, houses, or other tenements, for the purpose of residence or of occupation by him or her, or his or her servants, or for the purpose of any business,

[1] With regard to the question of aliens holding real property, the committee reported, "Several of the witnesses examined by the committee expressed a decided opinion that it would be expedient to permit aliens to acquire real property in this country with the same facility as in France and other European states. It is contended that foreigners are allowed to hold property in the funds to any extent; that by paying the cost of letters of denization they may acquire a legal right to hold any extent of land; that the law which forbids an alien to hold land is openly and easily evaded; and that this law, with all others to which the state cannot command obeisance, would be much better abandoned and repealed. On the other hand, it has been remarked that were a better system of conferring native rights on foreigners adopted, and were the process rendered less expensive and more expeditious than at present, little practical evil would accrue from rendering a foreigner's capacity to hold land dependent on naturalization; and that as in Great Britain certain civil and moral duties are considered to be attached to the possession of landed property, which could hardly be performed by non-resident aliens, it would be well for the state, on this ground, to refuse the capacity of holding real property to foreigners not domiciled in this country."

trade, or manufacture, for any term of years not exceeding twenty-one years, as fully and effectually, to all intents and purposes, and with the same rights, remedies, exemptions, and privileges, except the right to vote at elections for members of Parliament, as if he were a natural-born subject of the United Kingdom."

Doubts having arisen whether the act 7 and 8 Vict., c. 66, of 1844, extended to the colonies, an act was passed in 1847 (10 and 11 Vict., c. 83) declaring that it did not extend to the colonies, and that all laws, statutes, or ordinances duly passed or to be passed within Her Majesty's colonies or possessions abroad, conferring the privileges of naturalization within the limits of such colonies were valid, subject to the usual confirmation by the Crown.

The acts of the Imperial Parliament, constituting various colonies with independent legislatures, have expressly provided that the local legislatures should have power to deal with questions of land tenure, and certain colonies have accordingly made provisions by which aliens are enabled, within their limits, to hold land, either absolutely or on lease.

CANADA.

By the act of the Dominion of Canada (cap. 66 of 1868) no power is given to aliens who have not been naturalized to hold, inherit, or devise lands.

But by a consolidation act of Canada, (now the provinces of Ontario and Quebec,) cap. 8, s. 9, and a later act, cap. 16, of 1865, aliens have the same power as to holding, devising, &c., lands as natural-born or naturalized subjects of Her Majesty. And the 9th section of the former act is expressly kept alive by the act of the dominion.

In Nova Scotia aliens were empowered to hold, devise, &c., lands, by c. 34 of revised statutes, sect. 1, and this section is expressly kept alive by the act of the dominion.

In New Brunswick there does not appear to have been any like power conferred on aliens.

NEWFOUNDLAND.

No power is conferred upon aliens who have not been naturalized of holding, &c., lands. There is a general naturalization act, 20 Vict., c. 8.

PRINCE EDWARD ISLAND.

By act of 22 Vict., c. 4, (1859,) aliens are empowered to hold, &c., land up to the limit of 200 acres.

BRITISH COLUMBIA.

The colonies of British Columbia and Vancouver Island were united into one colony, "British Columbia," by imperial act, 29 and 30 Vict., c. 67; and by a subsequent local act, No. 37 of 1867, s. 10, which applies to the whole colony, aliens are empowered to hold lands, as if they had been natural-born British subjects.

CAPE OF GOOD HOPE.

By an act, No. 8 of 1856, all former laws, customs, or usages inconsistent with the act are repealed, and from its promulgation (June 4, 1856) aliens may purchase, acquire, and own fixed property in the colony, in like manner as natural-born subjects. But beyond this nothing in the act is to be taken as naturalizing any aliens, or bestowing upon them any of the privileges conferred by deeds of burghership.

NATAL.

By ordinance No. 6, of 1856, aliens are empowered to purchase or hold transfers of lands upon certain conditions, viz: The right does not extend to a period beyond that of four years from the date of registration of the transfer, and aliens may not alienate without license of the governor; and further, a fine is imposed unless letters of naturalization be taken out within four years from registration of the title.

By ordinance No. 7, of 1858, aliens are empowered to hold and give transfers of fixed property in the manner of natural-born subjects.

Under the law No. 1, of 1860, any alien who shall be the owner of landed property within the colony, and registered in his name, of not less a value than 300*l.*, is enabled to obtain naturalization without a previous residence of five years, as required from other aliens.

NEW SOUTH WALES.

By the colonial act 11 Vict., c. 39, 1847, aliens, subjects of a friendly state, may, without being naturalized, hold every species of personal property except chattels real. But for the purposes of residence or trade, they may hold land and houses for twenty-one years, with all the privileges of natural-born subjects, except that of voting at elections of members of the legislative council.

The law is therefore practically the same as in England.

QUEENSLAND.

The position of aliens is regulated by the aliens act of 1867, (31 Vict., No. 28,) the provisions of which, as regards aliens holding lands and houses, are similar to those of the aforesaid New South Wales act, 11 Vict., c. 39, of which colony Queensland formed part, until its separation in 1859.

VICTORIA.

The "aliens statute 1865" (28 Vict., No. 256) provides that alien friends resident in the colony may inherit, acquire, hold, and dispose of every description of property, whether real or personal, in the same manner as natural-born subjects of the Crown, and all dispositions of property made before the passing of the act to or by such aliens are declared to be valid.

SOUTH AUSTRALIA.

By the aliens act No. 5, of 1864, every person born of a mother who is a natural-born or naturalized subject is capable of holding real or personal estate.

Alien friends may hold every description of property, whether personal or real.

WESTERN AUSTRALIA, TASMANIA.

No power is conferred upon aliens who have not been naturalized of holding lands.

NEW ZEALAND.

The provisions of the alien act, 1866, (30 Vict., No. 17,) are the same as in New South Wales.

CEYLON.

No power is conferred upon aliens who have not been naturalized of holding lands. Special acts of naturalization are passed in each case.

BERMUDA.

The provisions of the act No. 11, of 1857, are practically the same as those in New South Wales.

BAHAMAS.

By an act, 25 Vict., c. 15, aliens are empowered to hold lands, houses, &c., for any term not exceeding twenty-one years, with full rights as natural-born subjects, except right of voting, &c.; and the governor is empowered to grant licenses to any company formed of aliens to hold lands for the purposes for which such company may be formed.

JAMAICA.

The colonial act, 14 Vict., c. 40, May, 1851, confers the same privileges on aliens with regard to leaseholds as the English act.

By 22 Vict., c. 1, (November, 1858,) every "immigrant," (*i. e.*, person introduced at the public expense from certain specified places,) who may obtain or become entitled to a certificate of industrial residence, becomes entitled to all the privileges of a natural-born subject within the colony.

TURKS AND CAICOS ISLANDS.

By ordinance No. 8, of 1857, (passed October 17, 1857, and confirmed February 13, 1858,) aliens may hold lands, salt ponds, &c., (except salt ponds at Turks Island,) on lease not exceeding twenty-one years, which lease may be renewed at the end of the term.

BRITISH GUIANA.

Letters of naturalization are required to enable aliens to hold property in shipping, but not to enable them to hold or bequeath property, or to qualify them for civil rights and duties within the colony.

BARBADOS.

By a local act (28 and 29 Vict., c. 4) aliens may hold leases for purposes of residence or occupation for any term not exceeding twenty-one years.

TRINIDAD, SAINT VINCENT, GRENADA, SAINT LUCIA, ANTIGUA, DOMINICA, TOBAGO.

No power is conferred on aliens who have not been naturalized of holding lands. In some of these islands special acts of naturalization are passed for each person; in others, as Saint Vincent and Grenada, there are general acts of naturalization.

NEVIS.

By aliens act of 1856 (No. 77) alien friends may take and hold lands by purchase or otherwise, as if they were natural-born subjects of Her Majesty.

SAINT KITTS AND ANGUILLA.

By a local act, No. 127, February 3, 1857, all domiciled or resident liberated Africans are to be deemed natural-born subjects and capable of holding real or personal estate. As are also the children, wherever born, of a mother a natural-born subject.

Aliens, subjects of a friendly state, may acquire and hold either real or personal estate as effectually as natural-born subjects, but they are not thereby made capable of becoming members of the council or of the assemby, nor of voting at the election of members of the assembly.

GIBRALTAR.

By order in council of 1859, aliens who have been resident and domiciled for fifteen years, or who, if resident and domiciled for less than fifteen years, have obtained the governor's special licenses, may hold lands as if they were British subjects.

SIERRA LEONE.

By the imperial act 16 and 17 Vict., c. 86, (August 20, 1853,) liberated Africans, domiciled or resident in Sierra Leone, are to be deemed within the colony to be natural-born subjects, and capable of holding and transmitting any estate, real or personal, within the colony. Power is, however, given to the local legislature to alter or repeal any of the provisions of the act so far as they relate to the right to real property.

HONDURAS.

The naturalization act 18 Vict., c. 18, (July 19, 1855,) is the same as the South Wales act.

By the 23d section of the immigration act, 24 Vict., c. 5, (1861,) every immigrant, born out of the British dominions, who shall have obtained or become entitled to a certificate of industrial residence, is entitled to all the privileges of a naturalized alien, except the capability to become a member of the assembly, which privilege, however, may be allowed by the superintendent.

HONG-KONG.

By the colonial ordinance, No. 2 of 1853, aliens may acquire and dispose of real estate within the colony as effectually as natural-born subjects.

[The foregoing information, so far as it relates to the colonies, is in part compiled from the colonization circular, No. 27, 1868, issued by the emigration commissioners, and has been revised by Mr. Holland, legal adviser to the colonial office.]

INDIA.

Lord Brougham, in the case of the Mayor of Lyons *v.* The East India Company, cited in "Hansard's law relating to aliens," said, with regard to the right of aliens to hold leasehold and freehold property in India, "No instance has been produced, indeed it is agreed on all hands that no instance has ever existed of a forfeiture to the Crown for this cause. There is no such thing known in those parts as an inquisition of office or any analogous proceeding, or any proceeding whatever for entitling the Crown, or those exercising its delegated authority, to the real estate or chattels real of aliens within the district. When those foreigners die their real estates have descended to their heirs, or been taken by their devisees, or been administered as assets by their executors, without any claim ever having been made by the sovereign power, which would here in England have been entitled without any office. Ejectments have been brought, and the parties in possession have never been advised to set up the defense that the lessor of the plaintiff claimed by descent from an alien; and dower has been assigned to widows alien also." (Moore's Privy Council Cases, vol. 1, p. 175.)

It appears from the printed "Proceedings of the Government of India Revenue March, 1868," that a report has been prepared by that government on the state of the law as to the right of aliens to hold lands in India.

This report states that the point was fully raised in the year 1834, when, in the case of General Claude Martin's will, "it was distinctly held by the supreme court at Calcutta that the English law as to aliens had never been introduced into India. * * * This decision gave rise to considerable excitement at the time, and the government of India addressed the court of directors very strongly on the subject."

The decision of the Calcutta court was confirmed on appeal by the Privy Council in the judgment of Lord Brougham above quoted.

Lord Brougham's ruling was accepted as the law on the subject by Sir C. Jackson, as advocate-general, in 1852.

It seems from the "Proceedings" that it may be open to doubt "whether the English alien law has, in effect, been extended to India by any more recent legislation, either English or Indian, and whether the transfer of the executive administration in India from the company to the Crown, by the 21st and the 22d Vict., c. 106, has in any way affected the case."

There is nothing in the *Indian* law disabling aliens, as *being aliens merely*, from holding lands. But there have been special regulations showing the jealousy with which the acquisition of land by alien Europeans has been regarded. (Bengal Regulations of 1793, 1795, 1803, 1813; Bombay, 1827.)

Indeed, up to 1834 no European, whether British or alien, could acquire land or rights in land except in certain specified cases, or by the permission of the governor-general, in either Bengal or Bombay. The law in Madras was not so accurately defined, but was substantially the same.

An act of 1837, the draught of which was drawn by Lord Macaulay in 1835, was passed partly to clear up doubts which had arisen under the charter act of 1833, regarding the nature of the estate which European British subjects could hold in land in India.

"In the original draught of that act, in Lord Macaulay's handwriting, stands, "It shall be lawful for any subjects of His Majesty to acquire and hold," &c.

But in the course of circulation the words "subjects of His Majesty" were struck through, and the words "any person of whatever nation" substituted. Eventually the original words were restored, and the act passed accordingly.

The jealousy with which the residence of Europeans, and especially alien Europeans, in the interior was looked upon by the East India Company, is ascribed to the doubts which existed as to the jurisdiction of the company over such European residents.

As a matter of fact, nevertheless, the courts of the East India have long since assumed (as early as 1796) and exercised, without demur, such jurisdiction.

The report of the "Proceedings" concludes with a recommendation "that there is no longer any reason of good policy why European foreigners should not be placed in the same position as European British subjects with respect to holding land in India. * * In practice European foreigners have resided without let or molestation, and have even held landed property all over India for the past forty or fifty years at least. * * *

"On the other hand, there are valid objections to the state of the law as it now exists. It disinclines cautious foreigners against acquiring property, and * * * it is quite possible that it may be made an instrument of private annoyance and injury. * * * During the Indigo disturbances in 1860–'61, one of the most turbulent and unpopular of the indigo planters in Behar was a Spaniard, Mr. Tolano, who was not at that time even naturalized, and who had no special permission to hold land. * * * Had the state of the law been known it would certainly have been taken advantage of by his native opponents, to his great injury and loss."

In accordance with this recommendation the following minute was issued on the 11th of April, 1868, ("Proceedings of the Government of India, Home Department, Legislative, April, 1868:")

"The governor-general in council has considered it expedient that all the regulations and acts which provide against the acquirement of land by Europeans in India should be repealed.

"2. They have no effect as regards Europeans, being British subjects, since Act IV of 1847, and they can therefore only operate against European foreigners.

"His excellency in council considers that the retention of these lands, as they now stand, is not only unnecessary and invidious, but might afford an opportunity for malicious injury.

"4. His excellency in council accordingly caused all the existing Bengal laws and regulations of this nature to be included in the bill for repealing certain enactments which have ceased to be in force or have become unnecessary, which became law as Act VIII, of 1868, on Thursday, the 2d instant.

"5. It is understood that both the governments of Madras and Bombay have similar repealing bills under consideration.

"*Resolved*, That the attention of the governments of Madras and Bombay be drawn to the expediency of repealing any laws affecting the free acquirement and enjoyment

of immovable property, or rights in such property, by European aliens which may exist in the code of either presidency; as, for example, the Bombay Regulation XXIII of 1827, sections 3 and 4, and the Madras Regulation of 1803, section 41."

CHAS. S. A. ABBOTT.

WOODSIDE, LYNMOUTH, BARNSTABLE, *September* 24, 1868.

APPENDIX No. IV.

POSITION OF ALIENS AND NATURALIZED ALIENS IN ENGLAND.

[*N. B.—This appendix is omitted, the statute of* 1870 *having made new provisions.*]

APPENDIX No. V.

NATIONALITY OF CHILDREN BORN OF ALIEN PARENTS.

The accompanying circular was sent from the foriegn office to her Majesty's representatives at European courts:

FOREIGN OFFICE, *August* 11 1868.

"I have to instruct you to furnish me with a report for the information of the Naturalization Commission on the state of the ——— law with regard to the nationality of children born of alien parents within the ——— dominions."

AUSTRIA.

VIENNA, *December* 8, 1868.

MY LORD: Having addressed myself to Baron Beust by note of the 22d ultimo, to remind his excellency of the request addressed to him by Lord Bloomfield in August last, to be informed as to the state of the laws in Austria, relative to children born of alien parents in this country, I have now the honor to transmit to your lordship copy, with translation by Mr. Grosvenor, of a note which, in the absence of Baron Beust, I have received from Baron Vesque.

Baron Vesque informs me that in the western (Cislcithan) portion of the empire, all children born of foreign parents are treated as aliens, illegitimate children following the nationality of the mother. But Baron Vesque promises that his reply to Lord Bloomfield's first note will be more complete when he has received the information as regards Hungarian law which he has applied for to the Hungarian government.

I have, &c.,

A. G. G. BONAR.

The Lord STANLEY, M. P., *&c., &c., &c.*

[Translation.]

In accordance with the wishes expressed by his excellency Lord Bloomfield, &c., in his note of the 15th of August, 1867, and referred to by Mr. Bonar, &c., in his note of the 22d of November last, the imperial royal ministry for foreign affairs has the honor to inform Her Britannic Majesty's chargé d'affaires, that according to the laws in force in the western half of the Austro-Hungarian monarchy, children born of foreign parents within the limits of the lands represented in the Austrian Reichsrath are treated as aliens on account of their birth.

This rule applies as well to legitimate as to illegitimate children, and in the case of the latter, the nationality of the mother is decisive.

In order to furnish Her Majesty's government with authentic information respecting the provisions of the Hungarian legislature as regards the nationality of children born of foreign parents in Hungary, the imperial royal ministry for foreign affairs addressed a memorandum on this subject to the royal Hungarian ministry, but as no answer has up to this date been received, this matter will now be brought again to the recollection of the Hungarian ministry, and the imperial royal ministry for foreign affairs will not fail to communicate the desired information to Her Britannic Majesty's chargé d'affaires so soon as they shall have obtained it.

The undersigned avails himself, &c.

Signed for the minister for foreign affairs,

S. T. VESQUE.

VIENNA, *December* 21, 1868.

MY LORD: With reference to my dispatch to Lord Stanley, of the 8th instant, informing his lordship, in reply to the queries addressed to me in his dispatch No. 70, circular of the 11th of August, that according to the law of the western (Cisleithan) portion of the empire all children born of foreign parents in Austria are regarded as aliens, illegitimate children of aliens being regarded to follow the nationality of the mother, I have now the honor to inclose to your lordship a translation of a note I have this day received from the imperial chancery of State, stating that the laws of Hungary on that point are identical with those of Cisleitha.

I have, &c.,

A. G. G. BONAR.

The Right Hon. EARL of CLARENDON, K. G., *&c., &c., &c.*

In sequel to the note of this department, of 30th of last month, the ministry foi foreign affairs has the honor to inform Mr. Bonar, &c., that as regards the nationality of illegitimate children born in this country of alien parents the laws in force in the lands belonging to the Hungarian Crown are identical with those of the western portion of the Austro-Hungarian monarchy.

The undersigned avails, &c.,

BIEGELEBEN.

VIENNA, *December* 20, 1868.

BADEN.

STUTTGART, *September* 2, 1868.

MY LORD: In compliance with the instructions contained in your lordship's dispatch marked circular, of the 11th instant, I made the necessary inquiries in order to ascertain the state of the Würtemberg law with regard to the nationality of children born of alien parents within this kingdom, and the following is the result which I am now able to transmit to your lordship.

According to Würtemberg law all children born of alien parents in this kingdom are considered as inheriting the nationality of their parents; that is to say, all legitimate children the nationality of their father, and illegitimate children that of their mother; and the fact of a child of alien parents having been born on Würtemberg territory does not, according to the laws in force here, exercise any influence whatsoever upon the question of its nationality.

I have the honor to inclose the accompanying translation of a note from Baron Freydorf to Mr. Bailie, respecting the Baden law on this subject.

I have, &c.,

G. J. R. GORDON.

The LORD STANLEY, M. P., *&c., &c., &c.*

[Translation.]

CARLSRUHE, *August* 28, 1868.

The Baden legislature proceeds upon the principle that children born of a legally recognized marriage follow the nationality of the father, and illegitimate children that of the mother, consequently the children of a foreign father born in the Grand Duchy, of a legally recognized marriage, or illegitimate children of a foreign mother are regarded as aliens.

Nevertheless, article 9 of the Baden "Landrecht" provides that any one born in the country of a foreign parent shall be entitled within a year after attaining his majority (which takes place in Baden after the age of 21) to claim the rights of a native-born subject, only if he resides in the Grand Duchy he must at the same time declare that he intends to fix his abode there, and, if he is in a foreign country, he must promise to fix his abode in the Grand Duchy, and actually settle there within a year after having made the promise.

According to article 9a. of the Baden "Landrecht," however, this claim must be submitted to the consideration of the government, for their recognition or refusal of the same, whenever such alien possesses by birth the right of nationality or a fixed abode in another state.

The undersigned avails, &c.,

FREYDORF.

EVAN M. BAILIE, Esq.

BAVARIA.

MUNICH, *August* 20, 1868.

MY LORD: With reference to your lordship's circular dispatch of the 11th instant, I have the honor to transmit herewith a copy and a translation of a note of the 17th instant, which I received yesterday evening from Mr. de Daxenberger, in Prince Hohenlohe's absence, in answer to my inquiries relative to the state of the Bavarian law with regard to the nationality of children born of alien parents within the Bavarian dominions.

From this note your lordship will perceive that according to Bavarian law the children of aliens, even when born in Bavaria, do not acquire the Bavarian citizenship, but are considered and treated as aliens, until they shall have been naturalized in the same manner as all emigrants; but that, on the other hand, the children of immigrants begotten after the naturalization of their parents are considered as Bavarian subjects.

I have, &c.,

HENRY F. HOWARD.

The LORD STANLEY, M. P., *&c.*, *&c.*, *&c.*

[Translation.]

The undersigned, in answer to the note of Sir H. F. Howard, &c., &c., &c., of the 14th instant, has the honor to reply that according to Bavarian law the children of aliens, being persons not belonging to the Bavarian state, even when begotten and born in Bavaria, do not acquire the Bavarian citizenship, but are considered and treated as aliens until they shall have been naturalized in the same manner as all immigrants.

On the other hand, the children of immigrants begotten after the naturalization of their parents are considered as Bavarian subjects.

The undersigned, &c.,

V. DAXENBERGER.

Sir H. F. HOWARD, K. C. B., *&c.*, *&c.*, *&c.*

BELGIUM.

BRUSSELS, *August* 20, 1868.

MY LORD: In reply to your lordship's dispatch, marked circular of the 11th instant, in which I am instructed to report on the state of the Belgian law with regard to the nationality of children born of alien parents in the Belgian dominions, I have the honor to inclose herewith copies of the two articles of the civil code which afford the information desired.

I beg further to explain that, according to the doctrine and jurisprudence most generally received, the individual who complies with the conditions of article 9 of the civil code is considered a Belgian subject from the day of his birth, and not from the day on which he may make the declaration, the declaration having a retroactive effect; therefore the declaration once made the individual making it is considered as never having been a foreigner.

I have, &c.,

HOWARD DE WALDEN AND SEAFORD.

The LORD STANLEY, M. P., *&c.*, *&c.*, *&c.*

[Translation.]

Every individual born in Belgium of a foreigner may, during the year which follows the epoch of his majority, reclaim the quality of a Belgian, provided that, in case he shall reside in Belgium, he declare that it is his intention to fix his domicile there, and in case he shall reside in a foreign country he makes his submission to fix his domicile in Belgium, and establish himself there within one year, from the date of the act of submission. (Article 9, civil code.)

The person born in Belgium of alien parents residing there, who shall have neglected to make the declaration prescribed by the ninth article of the civil code, may, if he is an inhabitant of the country, ask for full naturalization without being required to show that he has rendered eminent services to the state. (Law of September 27, 1835, article 2.)

DENMARK.

BRITISH LEGATION, COPENHAGEN,
July 30, 1868.

MY LORD: As a supplement to my dispatch of the 27th ultimo, on the position of aliens in Denmark, I have the honor to inclose herewith, at the request of the naturalization commission, the written opinion of Mr. Brock, a distinguished Danish lawyer, with reference—

1. To the oath required of aliens entering on certain professions.
2. Whether the birth in Denmark of the son of an alien constitutes a Danish subject.

Your lordship will see by the inclosed document that—

1. The "Borgherskab" or Burgherbur oath was abrogated in 1858. The oath now taken by brokers, translators, &c., is non-political, and limited to the faithful performance of their office.
2. The son of an alien born in Denmark is considered a Dane, to all intents and purposes, so long as he remains in Denmark.

I have, &c.,

CHARLES LENNOX WYKE.

The Lord STANLEY, M. P., *&c*

COPENHAGEN, *July* 26, 1868.

SIR: Your excellency has asked my opinion on the following questions:

1. Is the "Borgerbur" oath still required for entering on certain professions; and, if so, what professions?
2. Does the fact of birth in Denmark constitute a son of an alien a Danish subject?

Answer, 1. The "Borgerbur" oath required by the Danish law for entering on professions of different kinds has been abolished by the law of December 29, 1857. The oath still taken by brokers, translators, and such persons of public trust, that they will faithfully perform the duties imposing on their office, has no influence upon their situation as subjects of the Danish Crown, and is no oath of allegiance.

2. The son of an alien born in Denmark is regarded a Dane if he remains here.

I have, &c.,

GUSTAV BROCK,
Advocate of the Supreme Court.

Sir CHARLES L. WYKE, K. C. B., *&c.*

BRITISH LEGATION, COPENHAGEN,
August 17, 1868

MY LORD: In reply to your circular marked of the 11th instant, instructing mo to furnish a report for the informatiou of the naturalization commission on the state of the Danish law with regard to the nationality of children born of alien parents within the Danish dominions, I have the honor to refer your lordship to my dispatch marked of the 28th ultimo, which contains the information required by the commission with reference to this subject.

I have, &c.,

CHARLES LENNOX WYKE.

The Lord STANLEY, M. P., *&c*

FRANCE.

Code Napoleon, Civil Code, book I, ch. 1.

"9. Any person born in France, being the child of a foreigner, may, in the year following the time of his attaining his majority, claim French citizenship; provided that, in case of his residing in France, he declare that it is his intention to fix his domicile there, and that, in case of his residing in a foreign country, he promise to fix his domi cile in France, and that he establish it there within one year from the date of making such promise.

"10. Any child of a Frenchman born in a foreign country is French. Any child born in a foreign country, whose father is a Frenchman who has lost his French citizenship, can always recover such citizenship by complying with the formalities prescribed in article 9.

"C, 11, *section I.*

"17. French citizenship shall be forfeited, first, by naturalization in a foreign country; second, by the acceptance, when not authorized by the King, of public functions

conferred by a foreign government; third, finally, by any settlement in a foreign country without intention to return. A settlement for commercial purposes shall not be considered as having been made without intention to return.

"18. A Frenchman who has lost his French citizenship can always recover it by returning to France with the authorization of the King, and by declaring that he desires to settle there, and that he renounces every distinction contrary to the French law."

The ninth article of the Code Napoleon was modified by a law of 1851:

"29-29th of January and 7th February, 1851, (10th series, No. 2, 730; Article 9, C. N.,) law relating to persons born in France, and being the children of foreigners who were themselves born there, and the children of naturalized foreigners.

"ARTICLE 1. Any person is French who was born in France and is the child of a foreigner who was likewise born there, unless within the year following the time of his attaining his majority he claims foreign citizenship by a declaration made either before the municipal authorities of his place of residence or before the diplomatic or consular agents accredited in France by the foreign government.

"Article 9 of the civil code is applicable to the children of a naturalized foreigner, although they may have been born in a foreign country, if they were minors at the time of their father's naturalization. With regard to children born in France or abroad, who were of age at the same time, article 9 of the civil code is applicable to them in the year following the date of the aforesaid naturalization."

GREECE.

ATHENS, *September* 3, 1868.

MY LORD: With reference to your lordship's circular dispatch of the 11th ultimo, I have the honor to inclose herewith a copy of a report, drawn up by the lawyer employed by this legation, on the state of the Greek law with regard to the nationality of children born of alien parents within the Greek dominions.

I have, &c.,

C. M. ERSKINE.

The Lord STANLEY, M. P., *&c.*

What is the condition of children born on Greek soil of foreign parents?

As a general rule, the circumstance of a child's having been born on Greek soil does not cause him to be considered as a Greek; his origin alone does so. In order, therefore, to settle the question whether a child is a Greek or not, a single thing is to be considered—of whom was he born? If the child of a Greek, he is a Greek himself, in whatever country he was born. If his parents are foreigners he is a foreigner like them, even if he was born in Greece. (Article 14, No. 1, of the civil code.)

It must, however, be remarked that the circumstance of a child's having been born on Greek soil produces a double effect in his favor.

1. It enables him to acquire Greek citizenship more readily than an ordinary foreigner. He has, in fact, but to fulfill three conditions:

(*a.*) To declare, while residing in Greece, that it is his intention to fix his domicile there, and to so establish it within one year from the date of such declaration;

(*b.*) To make this declaration within one year from the date of his majority; and

(*c.*) To take the oath of allegiance as a Greek subject before the competent monarch. (Articles 19 and 17 of the civil code.)

2. It causes it to be taken for granted, when his father and mother are unknown, that he is the child of Greek parents, and that he is consequently a Greek himself. (Article 114, No. 3 of the civil code.)

The principle that the origin of the child determines his nationality, independently of the place of his birth, presents no difficulty when his father and mother are both foreigners; the child is a Greek in the first case, a foreigner in the second. What, however, is to be decided upon if the one is a Greek and the other a foreigner? Shall the child follow the condition of his father or that of his mother?

If the child was born in lawful wedlock this question will rarely arise, for as the wife follows the conditions of her husband, (articles 21 and 25 of the civil code,) both husband and wife will, in most cases, be both Greeks or both foreigners. Still, as the principle enunciated by these articles must be understood in this restricted sense, that the woman acquires the condition which her husband has at the time of her marriage, the contrary hypothesis may arise. Then will the child's condition be that of his father or that of his mother, the father being the head of the family? Article 14, No. 1, decides that the nationality of the child will be that of the father.

As to a child born of a foreign mother and a native Greek father, if he is legally

recognized by his father alone, or by his father and his mother, his condition will be that of his father. (Article 14, No. 5, of the civil code.) On the other hand, it must be decided that if he has been recognized by his mother only, he is, like her, a foreigner.

He who is born of a Greek mother and a foreign father is considered a Greek subject if he has not been recognized by the latter. (Article 14, No. 2, of the civil code.) If he has been recognized by him, in order to obtain Greek nationality he must comply with the formalities already mentioned in article 17 of the civil code. (Article 19 of the same code.)

It remains to examine the question whether the child acquires the condition which his father or his mother had at the time of his conception or of his birth. The question is an interesting one, for the person whose condition the child is to follow may, in the interval between his conception and his birth, have ceased to be a Greek by naturalization abroad; or, having been a foreigner, she may have become a Greek by naturalization in Greece.

Article 11 of the civil code proclaims the Roman maxim, *Infans conceptus pro nato habetur, quoties de ejus commodis agitur;* and since, in the eyes of the Greek law, it is better for the child to be born a Greek than a foreigner, we will say that it is sufficient, in order that a child may be born a Greek, for the person whose condition he is to follow to have been a Greek, either at the moment of the conception or at the moment of his birth, or even in the interval between these two dates.

Children born between the two or three years required for the naturalization of a foreigner (according as he is or is not of Greek origin) become Greeks by the naturalization of their father. (Article 18 of the civil code.) As to children born to him before the declaration required for naturalization, they will remain foreigners, as will also his wife; but if at the time of his naturalization they were minors, they may acquire Greek nationality by manifesting their desire to do so, within the year following the date of their attaining their majority, before the communal magistrate of the place where they may desire to fix their domicile, by settling in Greece, and by taking the oath of allegiance as Greek subjects before the competent monarch. (Article 17 of the civil code.)

Article 20 of the same code decides that a child born of parents who had lost their Greek citizenship may always acquire such citizenship by complying with the formalities prescribed in article 17. As the civil code of Greece, in conferring citizenship, considers only the origin, there is no distinction to be made if the child of a former Greek was born abroad or in Greece; if those whose condition he follows are foreigners he is necessarily born a foreigner like them, whatever may be the place of his birth. It must be remarked, however, that the child born of an ex-Greek is treated more favorably than a child born in Greece of an ordinary foreigner; the one may *always*, that is to say, at any age, provided he be of age, claim Greek citizenship; he can do so, on the contrary, only within the year following the date of the attainment of his majority.

This difference is readily explained. The child born of an ex-Greek being a Greek by nature, the law does not doubt his attachment to Greece; at whatever time he may present himself it eagerly accepts him, convinced that the feeling which causes him to act can be but love for his natural country. The case is not the same with the child of a foreigner born in Greece; he is not at all a Greek. It may be that he feels a fondness for Greece since he was born there, but if he is too tardy in making known his desire to bear the title of a Greek, the law, being warned by his indifference, presumes, when he presents himself later, that he comes only for his own personal interest, and therefore treats him like an ordinary foreigner.

ATHENS, *August* $\frac{19}{31}$, 1868.

D. G. RHALLY,
Advocate, Doctor of Laws.

HANSE TOWNS.

HAMBURG, *September* 8, 1868.

MY LORD: I have the honor to acknowledge the receipt of your lordship's circular dispatch under date of the 11th of August, instructing me to report as to the law of the Hanse Towns with respect to the nationality of children born of alien parents within their respective territories, and beg leave to report as follows:

According to the law of Lubeck all legitimate children born of alien parents within its territory take the nationality of the father, while those which are illegitimate take that of the mother until another nationality is acquired for them.

The law in force in Bremen prescribes merely that children of alien parents who are not citizens of Bremen are not to be regarded as subjects of that state, and makes no conditions as to their being born in wedlock or not.

According to the law of Hamburg the nationality of the parents is transmitted to the children without any restrictions whatever as to the place of birth, except in the case of illegitimacy, when the children take the nationality of the mother.

I have, &c.,

GEORGE ANNESLEY,
Acting Consul-General.

The Lord STANLEY, M. P., *&c.*

HESSE-DARMSTADT.

No. 7.] DARMSTADT, *September* 9, 1868.

MY LORD: Upon the receipt of your lordship's circular dispatch of the 11th ultimo I addressed a note to Baron Dalwigk, of which I have the honor to inclose herewith a copy, and I have now received from his excellency the answer, of which a copy is likewise herewith transmitted.

Your lordship will learn from this correspondence that children born of alien parents within the grand ducal dominions retain their "status" as aliens, unless they are appointed to a public employment in the grand duchy, or are naturalized by a special act.

I have, &c.,

R. B. D. MORIER.

The Lord STANLEY, M. P., *&c.*

BARON: Having been instructed by my government to furnish it with a report concerning the laws relating to the nationality of children born in the grand ducal territory of parents not natives of the grand duchy, I have recourse to your excellency's kindness, begging you to be pleased to furnish me with information concerning the laws in question.

I avail myself, &c.,

R. B. D. MORIER.

His Excellency BARON DALWIGK, *&c., &c., &c.*

SIR: In reply to the communication which you were pleased to address to me under date of the 19th ultimo, I have the honor to inform you that, according to article 13 of the constitution of the grand duchy, citizenship is acquired—

1. By birth, for those whose father or mother are at that time Hessian subjects.
2. By marriage, for a foreign woman who marries a Hessian subject.
3. By appointment to a public office.
4. By special admission.

Consequently, children born in the grand ducal territory of foreign parents are regarded as foreigners until they have acquired Hessian nationality by one of the means above mentioned.

Accept, &c.,

BARON VON DALWIGK.

DARMSTADT, *September* 7, 1868.

ITALY.

Codice Civile del Regno d'Italia, lib. I, tit. 1.

"4. The child of a citizen is a citizen.

"5. If the father has lost his citizenship before the birth of the child, the latter is reputed a citizen if he is born within the state and resides therein.

"Nevertheless, on becoming of age, according to the laws of the realm, he may elect to take the quality of an alien on making a declaration before the authorities of the civil state in which he resides, or, if in a foreign country, before the royal diplomatic or consular agents.

"6. The child born in a foreign country of a father who has lost his citizenship before the child's birth is reputed as alien.

"He can, however, elect to take the quality of a citizen on making a declaration as prescribed by the preceding article, and fixing his domicile in the kingdom during the year in which he makes such declaration.

'Nevertheless, if he has accepted public employment in the kingdom, or has served

in the army or navy, or otherwise satisfied the requirements of the conscription without seeking exemption as an alien, he shall be considered a citizen without further process.

"7. When the father is unknown the child of a citizen mother is a citizen.

"When the mother has lost her citizenship before the birth of the child, the dispositions of the two preceding articles become applicable.

"If even the mother is unknown, a child born in the kingdom is a citizen.

"8. The child of an alien who has established his domicile within the kingdom uninterruptedly for ten years is considered a citizen; residence for commercial purposes is not sufficient to constitute domicile.

"The child can, however, elect to be considered an alien, on making the declaration prescribed in article 5.

"When the alien has not established his domicile in the kingdom for ten years, the child is considered an alien; but the dispositions of the two first paragraphs of article 6 are applicable to the case."

Extract of paragraph 10: "The wife and minor children of an alien who has obtained citizenship become citizens, on the condition of their also establishing their residence in the realm, but the children can elect to take upon them the quality of aliens on making the declaration prescribed in article 5."

Extract of paragraph 11: "The wife and minor children of one who has lost his citizenship become aliens, unless they have continued to reside within the realm.

"Nevertheless, the wife can re-acquire citizenship in the case and by the means stated in the second paragraph of article 14, and the children according to the second and third paragraphs of article 11."

NETHERLANDS.

No. 280.] THE HAGUE, *September* 14, 1868.

MY LORD: With reference to your lordship's dispatch circular No. 43, of the 11th ultimo, instructing me to furnish a report, for the information of the naturalization commission, on the state of the Netherlands law with regard to the nationality of children born of alien parents within the Netherlands dominions, I have the honor herewith to transmit to your lordship copy of a note, dated the 3d instant, from the Netherlands minister of foreign affairs, supplying information on the subject.

I have, &c.,

E. A. J. HARRIS.

The Lord STANLEY, M. P., *&c.*

THE HAGUE, *September* 3, 1868.

Mr. MINISTER: By your note of 17th August last you were so good as to request information from me respecting the nationality of children born of foreign parents on the territory of the kingdom. I have the honor to inform you that a distinction should be made between entire nationality, extending to the exercise of civil and political rights, and partial nationality, comprising only the enjoyment of civil rights.

Entire nationality is acquired by children born of foreign parents—

1. When they are born, either within the kingdom or abroad, of parents settled in the kingdom in Europe.

Article 3 determines the conditions of the settlement.

2. When they are born in the kingdom in Europe of parents who are not settled there, and the year after having reached the age of twenty-three, by authority of their place of birth, declare their intention to continue to reside there.

The children of parents born abroad enjoy only partial nationality.

1. Those who are born, either on the territory of the Netherlands or in a foreign country, of parents settled in the kingdom or its colonies.

2. Those who are born in the kingdom in Europe of parents who were not settled there when they themselves settled.

Hoping that the foregoing will be sufficient for the end which the commission of naturalization has in view,

I take this occasion, &c.,

ROEST VAN LIMBURG.

Vice-Admiral HARRIS, *&c.*

PORTUGAL.

No. 38.] LISBON, *August* 27, 1868.

MY LORD: On the receipt of your lordship's circular dispatch of the 11th instant, I addressed a note to the minister of foreign affairs, requesting his excellency to inform me as to the actual state of the Portuguese law with regard to the nationality of children born of aliens within the Portuguese dominions.

In his excellency's note to me of the 22d instant, in reply to the above, and of which I have the honor to inclose a copy and translation, your lordship will find a statement of the Portuguese law on the matter.

I have, &c.,

CH. A. MURRAY.

The Lord STANLEY, M. P., *&c.*

[Translation.]

FOREIGN DEPARTMENT, LISBON, *August* 22, 1868.

MOST ILLUSTRIOUS AND EXCELLENT SIR: I had the honor to receive the note which your excellency was pleased to address to me on the 19th instant, requesting, in the name of your government, and for the information of the commission on naturalization, to be made acquainted with the present state of the law, as regards the nationality of children born of aliens within the Portuguese dominions.

In reply it is my duty to state to your excellency that the law declares that those born in this kingdom of an alien father are Portuguese citizens, provided the latter does not reside in this country in the service of his own nation, and unless the former should declare, when of age or emancipated, or through their parents or guardians, if minors, that they do not wish to be Portuguese citizens. (Civil code, title 11, article 18, No. 2.)

Those born in this kingdom when the mother alone is Portuguese, if illegitimate. (No. 1.)

The declaration required in No. 2 shall be made before the municipality of the place where the declarer shall have resided. (§ 1.)

A minor on coming of age, or when emancipated, may, by means of a new declaration, made before the municipality of the place which he may have chosen for his domicile, recall the declaration which may already have been made during his minority, by his father or guardians, in accordance with No. 2, (§ 2.)

I avail, &c.

CARLOS BENTO DA SILVA.

Sir CHARLES A. MURRAY, *&c., &c., &c.*

PRUSSIA.

No. 2.] BERLIN, *September* 5, 1868.

MY LORD: With reference to your lordship's dispatch to Lord Augustus Loftus, marked circular No. 173, of the 11th ultimo, instructing his excellency to furnish your lordship with a report with regard to the nationality of children born of alien parents within the Prussian dominions, I have the honor to inclose to your lordship, herewith, copy and translation of a note from the Prussian foreign office, in which it is stated that no special legal provisions exist in Prussia with regard to this question. Monsieur von Kehler incloses, however, a copy of the law of the 31st of December, 1842, with reference to the acquirement or loss of the rights of Prussian subjects, and remarks that, in accordance with the provisions of this law, the general principle observed with regard to nationality is that legitimate children follow the nationality of the father, and illegitimate children that of the mother. No legal consequences, as regards nationality, are attached to the circumstance of a child being born in the Prussian dominions.

I have the honor to transmit to your lordship a translation of the law inclosed in Monsieur von Kehler's note.

I have, &c.,

FRANK C. LASCELLES.

The Lord STANLEY, M. P., *&c., &c., &c.*

[Translation.]

BERLIN, *August* 31, 1868.

According to the contents of his excellency Lord A. Loftus's letter of the 24th instant, the government of Her Britannic Majesty are desirous of obtaining information relative to the legal provisions in force in Prussia with respect to the nationality of the children born of foreign parents within the Prussian dominions.

With reference to this subject, the undersigned has the honor to inform his excellency Lord A. Loftus that no special legal provisions exist in Prussia with regard to this question. In accordance with the regulations laid down in the annexed copy of the law of the 31st December, 1842, respecting the acquirement or loss of the quality of a Prussian subject, the general principle is observed with reference to the decision of personal relations, and also of nationality, that legitimate children follow the nationality of the father, and illegitimate children that of the mother, unless an alteration is made in consequence of the proceedings of the children themselves. No special consequences with respect to nationality are attended to the fact of being born in Prussia.

The undersigned avails, &c.

V. KEHLER.

His excellency Lord A. LOFTUS, *&c., &c., &c.*

——

Law respecting the acquisition and loss of the quality of Prussian by a Prussian subject, and his admission to foreign citizenship.—December 31, 1842.

We, FREDERICK WILLIAM, &c., &c., ordain, &c.

ARTICLE 1.

The rights of Prussian subjects are founded on—

1. Descent, (§ 2.)
2. Legitimization, (§ 3.)
3. Marriage, (§ 4,) and
4. Permission, (§§ 5, &c.)

Adoption does not alone produce this effect.

§ 2. Every legitimate child of a Prussian subject is by birth a Prussian subject, even though born in a foreign country. Illegitimate children follow the *status* of the mother.

§ 3. If the mother of an illegitimate child is a foreigner and the father a Prussian, the child may become a Prussian subject by means of legitimization drawn up in accordance with the Prussian laws.

§ 4. A foreign woman becomes a Prussian subject on her marriage with a Prussian.

§ 5. Permission to become a Prussian subject may be granted upon the issuing of a deed of naturalization, which the police authorities are empowered to grant.

§ 6. A permission to a foreigner to enter the service of the Prussian state takes the place of the deed of naturalization. An exception to this rule is made in cases of foreigners employed abroad as consuls or commercial agents.

§ 7. The rights of Prussian subjects can only be granted to those foreigners who—

(1.) Are capable of receiving them in accordance with the laws of their former country.

(2.) Have led an irreproachable life.

(3.) Have got a house or the means of subsistence in the place where they have settled.

(4.) Are in a position to sustain themselves and their families in that place.

(5.) If they are subjects of a German state, have fulfilled their military obligations to their original country, or have been released by so doing.

§ 8. The police authorities are bound before granting naturalization rights to inform the municipality of the district where the applicant purposes to reside, in accordance with the requirements of § 7, Nos. 2, 3, 4, and to listen to their statement and to regard their objections.

§ 9. The grant of naturalization confers all the rights and duties of a Prussian at the date of the grant.

§ 10. The permission to become a Prussian subject will be extended, unless a special exception is made, to the wife and children under age. If one of these should not have complied with the requirements of § 7, No. 2, respecting a blameless life, and should therefore not be admitted, the whole family must be refused.

§ 11. Nothing in this law shall affect the rights and duties of subjects resulting from the possession of landed property, and especially from the possession of manors and from the oath of homage.

§ 12. No parish may receive a foreigner as a member until he has obtained the rights of a Prussian subject.

§ 13. Residence within the Prussian state shall not for the future constitute a claim for becoming a Prussian subject.

§ 14. Foreigners who wish to reside in Prussia, and do not wish to be regarded as mere travelers, may be called upon to prove the continuance of their former allegiance by means of a certificate. (Heimathschein).

§ 15. The quality of a Prussian subject is lost—

1. By discharge upon the subject's request.
2. By sentence of the competent authority.
3. By living ten years in a foreign country.
4. By the marriage of a female Prussian subject with a foreigner.

§ 16. The discharge has to be asked for from the police authority of the province in which the subject's domicile is situated, and is effected by a document made out by the same authority.

§ 17. The discharge cannot be granted—

(1.) To male subjects who are between seventeen and twenty years of age, until they have got a certificate of the military commission of recruitment of their district, proving that their application for discharge is not made merely to avoid the fulfilling of their military duty in the standing army.

(2.) To actual soldiers, belonging either to the standing army or the reserve; to officers of the militia and to public functionaries, before their being discharged from service.

(3.) To subjects having formerly served as officers in the standing army or the militia, or having been appointed military employés, with the rank of officers, or civil functionaries, before they have got the consent of the former chief.

(4.) To the persons belonging to the militia, not being officers, after their having been convoked for actual service.

§ 18. To subjects wishing to emigrate into a state of the German confederacy the discharge may be refused if they cannot prove that the said state is willing to receive them. (See act of the German Confederation, article 18, No. 2, lit. A.)

§ 19. For other reasons than those specified in §§ 17 and 18, the discharge cannot be refused in time of peace. For the time of war, special regulations will be made.

§ 20. The document of discharge effects, at the moment of its delivery, the loss of the quality as Prussian subject.

§ 21. If there is no special exception, the discharge comprehends also the wife and the minor children that are still under their father's authority.

§ 22. Subjects living in a foreign country may lose their quality as Prussians by a declaration of the police authority of Prussia, if they do not obey, within the time fixed to them, the express summons for returning to their country.

§ 23. Subjects who either—

(1.) Leave our states without permission, and do not return within ten years, or

(2.) Leave our states with permission, but do not return within ten years after the expiration of the term granted by the said permission, lose their quality as Prussian subjects.

§ 24. Entering into public service in a foreign state.

The entering of a subject into public service in a foreign state is allowed only after his discharge (see § 20) has been granted to him. Anybody who has obtained it, is permitted to do so without restriction.

§ 25. A subject who—

(1.) Either takes public service in a foreign state, with our immediate permission;

(2.) Or is it appointed in our states by a foreign power, in an office established with our permission, as, for instance, that of consul, commercial agent, &c., remaining in his quality as a Prussian.

§ 26. General disposition.

Subjects who emigrate without having obtained their discharge, or violate, by their entering into public service in a foreign state, the disposition of § 24, are to be punished according to the laws existing in that respect.

Given under our hand and seal, Berlin, this 31st of December, 1842.

FREDERICK WILLIAM.

RUSSIA.

No. 181.] ST. PETERSBURG, *August* 25, 1868.

MY LORD: In obedience to the instructions contained in your lordship's dispatch, marked circular, of the 11th instant, I have the honor to report that the general law of Russia in regard to aliens is, that all foreign subjects who have not taken an oath of allegiance to Russia in due form, are held to be aliens. The law of the $\frac{1}{2}\frac{9}{2}$ February, 1864, of which an abstract was inclosed in my dispatch of the 30th June last, stipulates:

"5. The allegiance (to Russia) when sworn to (by the subject of a foreign power) is

merely personal, and does not affect children, whether of age or minors, previously born. Those born after the adoption of Russian nationality are acknowledged as Russians.

"12. Children of foreigners not Russian subjects, born and educated in Russia, or if born abroad, yet who have completed their education in a Russian upper or middle school, will be admitted to Russian allegiance, should they desire to be so, a year after they shall have obtained their majority; and, lastly,

"13. The children of foreigners wishing to become Russian subjects will be admitted to Russian allegiance on the same terms as their parents."

I have, &c.,

ANDREW BUCHANAN.

The Lord STANLEY, M. P., *&c., &c., &c.*,

SAXONY.

DRESDEN, *November* 27, 1868.

MY LORD: With reference to your lordship's circular dispatch of the 11th August, directing me to report on the state of Saxon law with regard to nationality of children born of alien parents within the Saxon dominions, I have the honor to inclose in translation the information furnished me by the Saxon government on the subject.

I have, &c.,

J. HUME BURNLEY.

In reply to the note of Her Britannic Majesty's chargé d'affaires of the 19th instant the undersigned has the honor to state, with reference to paragragh 2 of the law of the kingdom of Saxony of the 2d of July, 1852, relative to acquisition and loss of citizenship, copy of which is herewith annexed, that children of aliens born in Saxony do not by the mere accident of birth acquire Saxon nationality, inasmuch as the right of Saxon citizenship *by birth* is obtained only on the supposition that either the father or the mother (whether lawfully married or not) were at the time of such birth, either here or abroad, Saxon subjects.

The undersigned, &c.,

FRIESEN.

DRESDEN, *November* 21, 1868.

Paragraph 2 of the law relative to acquisition and loss of Saxon citizenship of July 2, 1852:

By birth all those are entitled to Saxon citizenship whose father, or, if illegitimate, whose mother, at the time of their birth, whether at home or abroad, were Saxon subjects.

SPAIN.

MADRID, *October* 8, 1868.

MY LORD: With reference to my dispatch of the 18th of August last, inclosing copy of a note which I addressed to the Spanish minister for foreign affairs, requesting his excellency to furnish me with information respecting the nationality of children born of alien parents in Spanish dominions, I have now the honor to forward to your lordship a translation of the Marquis Roneali's reply to my communication.

I further beg to inclose copies of the Spanish constitution, and of the royal decree of November 17, 1852, in which the passages having particular reference to the subject in question will be found marked.

I have, &c.,

JOHN F. CRAMPTON.

The Lord STANLEY, M. P., *&c.*

LEQUEITIO, *September* 15, 1868.

SIR: The minister of the interior informs me, under date of 4th inst., that the constitution at present in force in the Spanish monarchy and the royal decree of November 17, 1852, form the legislation which actually governs the nationality of children born of foreign parents in Spanish dominions.

I have the honor to inform you of this in reply to the note from your legation dated the 17th August last, and avail, &c.,

MARCUS RONCALI.

Her Britannic Majesty's MINISTER PLENIPOTENTIARY.

Extract from the constitution of the Spanish monarchy, May 23, 1845:

"Titulo 1.—De los Españoles.—Articulo, 1º.

"The following are Spanish subjects:

"1. All persons born within the dominions of Spain.

"The children of a Spanish father or mother, even though born without the Spanish dominions."

Extracts from the royal decree of the 17th of November, 1852:

"Capitulo 1.—De los estranjeros y su clasificacion en España.

"ARTICLE 1. The following are to be deemed aliens:

"1. All persons born of alien fathers without the Spanish dominions.

"2. The children of an alien father and Spanish mother, born without the said dominions, unless they have reclaimed Spanish nationality.

"3. Those born within Spanish territory of alien fathers or of an alien father and Spanish mother, unless they have made a similar reclamation.

"4. Those born without the Spanish dominions of fathers who have lost their Spanish nationality.

"5. Spanish women married to alien husbands.

* * * * * * *

"Capitulo 3, art. 24. Aliens domiciled or temporarily resident within the Spanish dominions, and their children, are exempt from military service unless they have reclaimed Spanish nationality.

"But this does not apply to the sons whose parents have been born within Spanish territory, even though they may have preserved their alien nationality."

SWEDEN.

No. 9.] STOCKHOLM, *September* 17, 1868.

MY LORD: With reference to your lordship's dispatch, marked circular, of the 11th of August, as to the Swedish law on the subject of the children of alien parents born in Swedish dominions, I have the honor to inclose herewith copy of a note which I have received from the Spanish minister for foreign affairs, wherein he informs me that there is no provision in the Swedish fundamental law or in the civil code on this subject, neither does there exist any special stipulation as to the nationality of children born in Swedish dominions of alien parents.

It is generally received, however, as expressed in Count Wachtmeister's note inclosed, that the nationality of the children is noways affected by the place of their birth, but by the nationality of their parents, and notably of their father.

I have, &c.,

J. PAKENHAM.

The Lord STANLEY, M. P., *&c.*

STOCKHOLM, *September* 12, 1868.

SIR: In reply to your note of the 18th ultimo, I have the honor to inform you that there is not in the fundamental laws, nor in the civil code, nor even in a special ordinance, a stipulation respecting the nationality of a child born in Sweden of foreign parents. Nevertheless, the opinion has always been held that nationality does not at all depend on the place of birth, but on the nationality of the parents. Consequently the children of foreign subjects do not, from the fact of being born in Sweden, enjoy fuller or other rights than those accorded to every foreigner.

Accept, sir, &c.,

WACHTMEISTER.

Mr. PAKENHAM, *&c.*

SWITZERLAND.

No. 98.] BERNE, *September* 6, 1868.

MY LORD: In your dispatch, marked circular, of the 11th ultimo, I am instructed to furnish your lordship with a report, for the information of the naturalization commission, on the state of the Swiss law with regard to the nationality of children born of alien parents in Switzerland.

Finding it difficult, without the assistance of the federal government, to draw up a report on this subject, the laws concerning which appear to vary in different cantons

I addressed a note to the president requesting him to obtain for me, from the various cantonal governments, replies to the following questions, which I thought calculated to procure the information required by the naturalization commission:

1. What is considered to constitute a *Swiss citizen* according to the laws of the various cantons?

2. In what manner, if in any, can such citizenship be forfeited?

3. Are the children of alien parents born in the canton regarded by the law as Swiss citizens?

a. *De facto* by the mere incident of their birth on Swiss territory?

b. If not, how long must the parents have resided in Switzerland previous to the birth of the children, or what additional circumstance, beyond the fact of their birth on Swiss territory, are required to constitute the children of Swiss citizens?

c. Are the children expected to *elect* Swiss citizenship by some *formal act* on their coming of age? and what is held to constitute a presumptive election of Swiss citizenship on their part?

In reply I have received a communication from the president, copy of which I have the honor herewith to inclose, together with the printed work therein referred to, drawn up by the federal chancery on the cantonal regulations for acquiring the right of citizenship.

I have, &c.,

J. SAVILLE LUMLEY.

The Lord STANLEY, M. P., *&c.*

BERNE, *August* 31, 1868.

In the note which the minister of Her Britannic Majesty addressed to the federal council on the 19th instant, his excellency expressed the desire to obtain various information upon the condition of Swiss legislation respecting the nationality of children born of foreign parents upon Swiss territory, which information was divided under the following heads:

1st. What is necessary that a person may be considered as a Swiss citizen according to the laws of the different Swiss cantons?

In order to become a Swiss citizen it is necessary that a person shall acquire the right of citizenship in a canton or a commune. No special right of Swiss citizenship exists. The right of communal citizenship takes the precedence and is acquired by descent, gift, or the payment of purchase-money, the amount of which varies according to the state of the commune's resources, and is always subject to the legislation of the canton.

After the acquisition of the citizenship of the commune, naturalization is conferred in the respective canton either by the government or legislative authority, for which naturalization the payment of a further sum as special purchase-money is required. Without naturalization the incorporation into a commune has no effect. So far as concerns naturalization of foreigners, the federal law only contains the provision of article 43 of the federal constitution, by virtue of which foreigners cannot be naturalized in a canton until they are freed from every tie toward the state to which they belong. The particulars of the legislation of the cantons are to be found in a collection of provisions relative to the subject, enacted by each canton, published in 1862 by the federal chancery, of which a copy is inclosed. If any changes have been made in those provisions, they relate, in each instance, to the form rather than the substance.

2. If citizenship can be lost, in what manner is it lost?

The right of Swiss citizenship ceases only with death, or by the voluntary renunciation, by the person who possesses it, of his cantonal and communal right of citizenship and by the release which the competent authority of the canton gives him. But this emancipation from the ties which bind him to the state is not granted until the proof exists in due form of the acquisition of citizenship in a foreign country. The legitimate children of an absent Swiss always acquire their right of citizenship from their father, and illegitimate children from their mother, provided that no other formality is necessary than the proof of descent. Swiss nationality is not lost by long absence, &c., as, in accordance with the provision of the same article 43 of the federal constitution, no canton can deprive any person leaving it from his right of origin or citizenship.

3. Are the children born in a canton of foreign parents considered in accordance with the laws as Swiss citizens?

a. De facto, by the mere fact of the birth of these children on Swiss soil.

In the contrary case:

b. How long must the parents have resided in Switzerland before the birth of the child, or what other circumstances, independently of the birth of the child on Swiss soil, are necessary in order that the children should be considered as Swiss citizens?

c. Must the children be expected to declare their choice of Swiss citizenship by a formal *act* on reaching their majority?

What gives ground for the supposition of a presumptive choice on their part of the right of citizenship?

In replying to this question and its three subdivisions, the federal council has the honor to observe that the principles just stated suffer no kind of exception; especially not in favor of foreigners born in Switzerland, even if they and their parents have been domiciled in Switzerland for a very long time. In this respect Switzerland maintains purely and simply the same principle that she recognizes for the children of her own citizens, viz, legitimate children follow the condition of their father, and illegitimate the condition of their mother.

Hoping that this information may be of some use to the naturalization commission, for which it has been requested, the federal council avails itself of this fresh occasion to renew to his excellency Mr. Saville Lumley the assurances of its high consideration.

On behalf of the federal council the president of the confederation,

DUBS.

The chancellor of the confederation,

SCHIESS.